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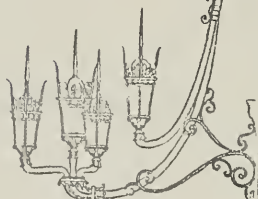
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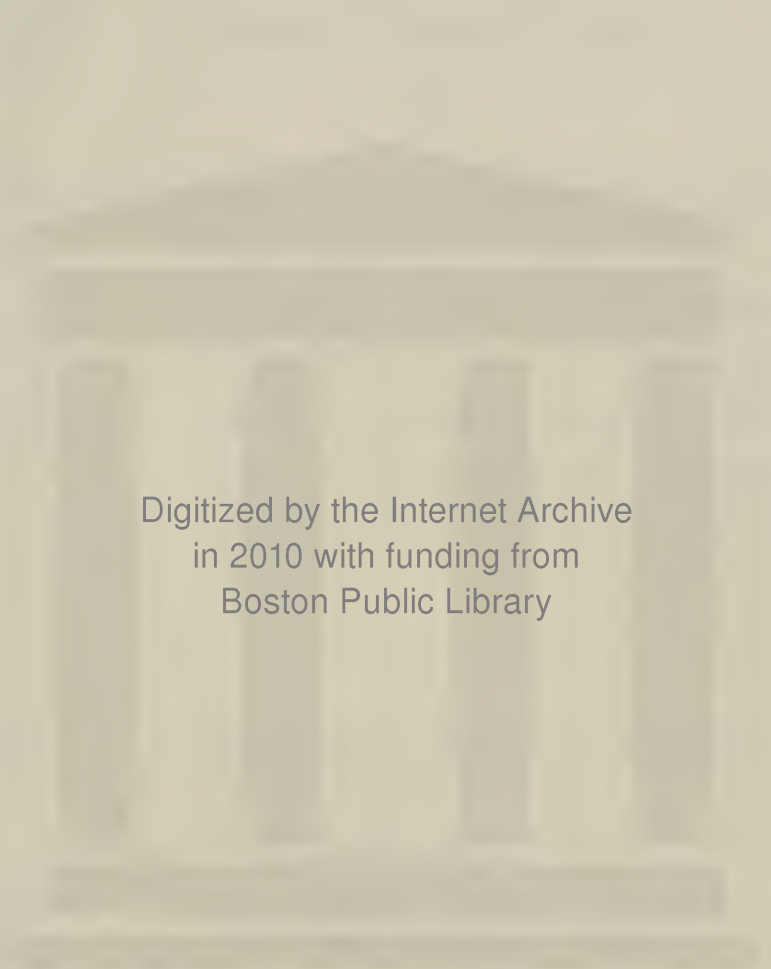
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THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF COMMUNITY AFFAIRS

A RESUMED PUBLIC HEARING held in the matter of Park Plaza Urban
Renewal Project at Room 607, the K. V. Minihan
Lecture Hall, Charles F. Hurley Employment
Security Building, located at the corner of
Cambridge and Staniford Streets, Government
Center, Boston, Massachusetts, on Wednesday,
January 24, 1973, commencing at 10:20 in the
forenoon.

BEFORE:

MILES MAHONEY, Commissioner, Department of
Community Affairs;

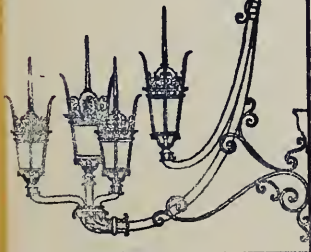
ALEXANDER KOVEL, Deputy Commissioner, Department
of Community Affairs;

FRANK W. MORRIS, JR., Esq., Hearings Officer,
Department of Community Affairs;

EDMUND MANGINI, Director, Bureau of Redevelop-
ment, Department of Community Affairs.

CHARLES V. LYNCH,
Certified Shorthand Reporter,
P. O. Box 201,
Methuen, Ma 01844.
Tel: 682-1954.

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MR. MORRIS: Ladies and gentlemen, our hearing will open. Mr. Mahoney.

CHARLES F. MAHONEY, Resumed

Mr. Morris and members of the panel, before the break which was taken in yesterday's proceedings, you will recall that we were at a point where I had been pointing out to you that the so-called new survey sheets with the classifications which have been added since the June 9, 1972, decision and submitted by the Authority, and the Building Conditions Report dated November, 1972, submitted to the Department on November 28, 1972, and the figures summarizing these sheets contained in the introduction to the building conditions survey in that same volume, have now been made consistent. But, why is it that the 1970 surveys now support the new figures submitted by the Authority that are significantly at variance with the figures submitted to the Department on January 13, 1972, and at the prior hearings, and upon which those figures were said to have been based? The new figures, of course, now indicate that 23 of the buildings in parcels A, B, and C are substandard warranting clearance. But, the figures previously submitted by the Authority state that only 15 were structurally substandard warranting clearance. Where did the 8 new buildings come from? Which of the 8 buildings now classified as structurally substandard on the 1970 survey forms

submitted at this hearing, were not so classified when Mr. Kenney testified before you in April of 1972?

I have previously introduced into evidence and marked as exhibits two memoranda, and I respectfully ask that you refer to these now, because I will be dealing with those. Those memoranda are the memoranda dated May 27, 1970, Exhibit No. 43, and I believe you also have as an exhibit, and perhaps Mr. Mangini can clarify this for us, memorandum of June 15, 1970. Do you have that now, Mr. Mangini?

MR. MANGINI: From whom?

MR. MAHONEY: From Mr. Warren Vincent to John D. Warner, Director. It is just for clarity.

May I introduce that now, Mr. Morris? I offer a memorandum of Warren J. Vincent, project engineer of the Redevelopment Authority, to John D. Warner, Director of the Boston Redevelopment Authority. That memorandum is dated June 15, 1970, and pertains to the building conditions survey conducted by the Authority in May and June of 1970.

For the record, Mr. Morris, let me say that identical memorandum was introduced as an exhibit in the prior hearings before, but, for your convenience and reference, I would like to ask it be marked for identification now.

MR. MORRIS: In accordance with the request of

counsel, we will introduce, or reintroduce, interoffice communication presumably from the Boston Redevelopment Authority.

MR. MAHONEY. At this point may I ask whether the Authority, which before recognized that this was a memorandum of its own records, which they had introduced at the City Council Hearings and at the prior hearings any dispute that it is still an interoffice memorandum?

MR. MORRIS: I was about to ask them if they had any objection, anyway; but, counsel purports to put into evidence a memorandum to John D. Warner from Warren J. Vincent, dated June 15, subject, Park Plaza Building Condition Survey, and this memorandum is sent by Warren J. Vincent, project engineer. There is no heading on the letter, but he indicates it appears to be an interoffice memo from your Department.

Do you have any objection to this going in?

MR. McCANN. No. I haven't verified it, but I have no comment on it.

MR. MORRIS. I take it you have no objection to me putting it in?

MR. McCANN. It's not up to myself.

MR. MORRIS. Well, then.

MR. McCANN. I believe there is already a record.

MR. MORRIS. All right. On that basis, I will identify

it as Exhibit No. 47, as a memorandum, interoffice memorandum.

MR. MAHONEY: No. 47; is that correct?

MR. MORRIS: Yes.

(EXHIBIT NO. 47.)

MR. MAHONEY: Now, gentlemen, you will recall that I had earlier testified that in 1970 there were a total of 88 buildings out of the 120 buildings surveyed by the Authority. Initially, 10 buildings were surveyed as to exteriors only. That was in March, April, and May of 1970. Those surveys, according to the memorandum of Mr. Vincent, dated May 27, 1970, were conducted in March, April, and May of that year and involved buildings for which building permits had been issued since 1964 which previously had been classified in the 1964 survey as deficient or substandard by the Authority.

Additionally, a total of 78 buildings were surveyed. 78 in addition to the 10. 61 of the 78 buildings had interior surveys which were conducted on June 9, 10, and 11 by Authority employees; and I refer you specifically to the surveys contained in the building conditions report dated November, 1972, which, on each such survey for that year, you will note the dates of those surveys. One man, as I pointed out earlier, did 8 buildings in one day, 40 minutes per building; 2 men did 16 buildings in 3 days.

In addition, 17 other buildings of the 78

which were classified in 1964 as deficient or substandard were also surveyed, but these 17 were surveyed on the exteriors only.

In the memorandum of May 27, 1970, you will note, reports that 10 buildings for which the exterior surveys were conducted and also reports that the exteriors of all buildings in the area were carefully examined by members of the Boston Redevelopment staff and their observations were recorded.

The Commissioner, in his decision of June 9, 1972, made that same note with respect to the 1970 surveys.

We will return to the May 27 memorandums shortly and particularly to the chart on page 3 of the May 27, 1970, memorandum dealing with the number of buildings which the Authority, on May 27, 1970, then said warranted clearance to remove lighting influences.

It is clear that between May 27, 1970, and June 15, 1970, the Authority had hurriedly conducted the major portion of its 1970 building survey. You will recall that surveys of the 78 buildings were conducted on June 9, 10, and 11, and then, on June 15. Hot on the heels of the completion of those surveys, Exhibit No. 47, the June 15, 1970, memorandum was written contemporaneously with this survey. In that memorandum of June 15, Exhibit 47, which has been introduced in evidence, Mr. Vincent reported to Director Warner -- please see page 2 of the

June 15th memorandum, Exhibit No. 47 -- a table showing the revised classifications of the buildings in the Park Plaza Project area. And I will give you each some extra copies of that.

These are just for the record, Mr. Morris, I am handing you xerox copies we made of that exhibit page just for the convenience of the panel.

In that memorandum, at page 2, you will note at the top a table showing the revised classifications, the revision being from the 1964 figures based on the surveys just then completed, June 9, 10 and 11. This memorandum was written by the man who was in charge of these surveys as to what those findings were. And that showed the classifications of the buildings in that area.

I will call your attention to that table. You will note that he reports that a total of 15 of the buildings in Parcels A, B and C were structurally substandard warranting clearance. That can be determined by noting the parcel numbers in the left-hand column. Those numbers are S2B3A, S2B3B, S2B4A. And down at the bottom, the following Parcels, 393, 394, 397A, and 396-407. You will note that 15 of the buildings were found by them to be structurally substandard warranting clearance.

I would also like to emphasize the contemporaneous nature of this report. And, Mr. Morris, as an attorney, you and

some of the other members of the panel, I think, in terms of the matter of credibility and reliability of records that are made, one has learned through the law and our rules of evidence which, while not applicable necessarily strictly at this hearing, I think experience has shown, and common sense has shown, that one is better able to rely upon records made at the time of an event occurring or contemporaneous with that event, in this case on June 15th, not on the heels of surveys completed on the 9th, 10th, and 11th of June in 1970 than upon some remade and refashioned findings that are submitted to you in November 28, 1972, I specifically call to your attention the volume which was introduced yesterday, and which I believe is labeled Exhibit 45, entitled FINAL PROJECT REPORT -- BUILDING CONDITIONS SURVEYS FOR 1964 AND 1970...Do you have that there?...which was received by the Department on May 15th, 1972, after the hearings conducted by the Department in April of 1972, this volume was received from the Authority. I specifically ask that, in that volume, you examine the 1970 survey forms prepared and submitted by the Authority to this Department.

If you do so, you will note that these forms do not contain any building classifications for the year 1970. I'm referring specifically, now, to the last pages of each of the forms for which a 1970 survey was made. You will note down at

the bottom of each form where the signatures appear that there is no building classification given to you as of that date, and that date is May 15th, 1972.

You will note, Mr. Mangini, that those 1970 forms are all appearing in that volume at the end. They go chronologically, the '64 ones appear first, then are followed by the 1970 ones. And, if you will go through each of these, gentlemen, you will find that nowhere in that volume on May 15, 1972, does a single building classification appear. And the relevance of this we will see in a few moments.

We do, however, have in evidence the June 15th memorandum of 1970, and that now is Exhibit No. 47, I believe...

MR. MORRIS: Yes.

MR. MAHONEY: Exhibit No. 47...of Mr. Vincent to Mr. Warner, a summary of the revised classification of the buildings in Park Plaza made after the 19 surveys had just been completed.

Now, you will look there and you will find, as I pointed out in parcels A, B, and C, that 15 of those buildings in parcels A, B, and C were found by the Authority to be structurally substandard. What I am pointing out to you, gentlemen, is that you have, on the one hand, a memorandum made a matter of days after the completion of the survey of the Authority, showing the results and classifications, in their

words, a table showing the revised classification of the buildings in the Park Plaza Project Area. And then you have a volume handed to you as their evidence in May 15, 1972, showing that there are no classification on those 1970 surveys. So, we have the classification of the evidence submitted by the Authority, however, as early as June 15th.

And I now would like to call your attention to the building conditions report submitted by the Authority to the Department on November 28, 1972, at the time of the resubmission, and that volume is Exhibit No. 42. I specifically call your attention to the 1970 survey forms contained in that volume for the buildings actually surveyed, and there, Mr. Mangini and Mr. Morris, you will note they do not appear at the end, rather, they appear in this order: The first is the 1964 survey, then the 1970 survey. So, if you will just go through and identify, look at some of the 1970 surveys -- and I hope later you will have a chance to look at each and every one of them -- you will see there is a significant change that's been made on each survey form.

Here, for example, is a parcel number, 41/2. I made a Xerox from that volume of November 28, 1972, the classification sheet, and now I would like to show you that same parcel; and I do this only as an illustration. I represent to you you would

make the same finding for each one, that identical sheet from the submission made to you by the Authority, which shows no classification on the sheet for that building. In all other respects, they are word for word; identical. Therefore, it is evident that new entries appear on every 1970 survey form, added since the date of the rejection of the Park Plaza Plan by the Department on June 9, 1972.

If you will compare the 1970 survey forms submitted to you on November 28, 1972, by the Authority, following the disapproval of the Plan by the Department, and the 1970 forms submitted by the Department on May 15, 1972, you will see that someone has entered new classifications on each of the 1970 survey forms.

MR. MORRIS: Question. Now, just taking the example you gave, on the form at the bottom of one, there's the word substandard or substantially substandard, whatever...

MR. MAHONEY: Substandard; yes, sir.

MR. MORRIS: ...whatever the phrase is. Now, is that what you yesterday called doctoring the forms?

MR. MAHONEY: That's a portion of it.

MR. MORRIS: Is that the type of thing that you are getting at?

MR. MAHONEY: Yes, sir; that's an illustration of that.

MR. MORRIS: The mere fact, months later, after May and November, practically the identical form now has some additional material placed on it by the B.R.A.?

MR. MAHONEY: Yes, Mr. Morris.

MR. MORRIS: And you question their right to do that?

MR. MAHONEY: It's not their right, Mr. Morris. They can set their own standards of appropriate behavior. What I question, Mr. Morris, is the reliability and integrity of the 1970 surveys. And I specifically, Mr. Morris, again, if I may, without belaboring the point, ask you to compare these classifications to the May 27th, 1970, and June 15th, 1970 classifications which were those exact classifications with what was represented to the Authority in its vote on June 18, 1970, and in its resolution and declaring the project decadent and blighted, represented to the City Council in declaring the evidence then as the basis for decadence, and at this hearing in April of 1972, and subsequent to the hearing as well.

Mr. Morris, if you look at the same volume, now, if you would look at the Building Conditions Survey, the most recent ones submitted, November, 1972, you will also note that, at the front of that volume, there has been introduced in 12 pages a heading called Introduction to the Building Conditions Report and 12 additional pages that summarize the guidelines

that were used. They do not appear in any of the prior materials.

There you will find in that material at page seven of the Introduction of the Building Conditions Report what can only be a flatly untrue statement, "Survey Standards" -- under B -- "The same standards as employed in the 1964 survey were used in the 1970 survey."

Now, Mr. Morris and gentlemen of the panel, what we have here very plainly is the following sequence of events: Surveys were made in 1964. You have those in evidence. You have them in this hearing in the volume just before you now, dated November, 1972, and you had them at various subsequent points thereto, at the prior hearing and after the prior hearing, as identified in the volume dated May 15, 1972.

You also have some 1970 surveys. You have them in the form originally submitted, unchanged, as late as May 15, 1972. You also have, very importantly, two independent documents, one dated May 15, 1972, from Mr. Vincent -- Excuse me. May 15, 1970. I believe I said '72. 1970. -- from Mr. Vincent to Mr. Warner, then Director John D. Warner, May 27th, and then you have the June 15th memorandum dated June 15, 1970, also from Mr. Vincent to Mr. Warner, Director Warner.

Again, I pointed out to you that those two memoranda were prepared, the first one after the 10 buildings that had

been issued building permits had been resurveyed, and some exterior surveys; the second one after 61 buildings had had their interior surveys completed three or four days before that. There were classifications made, as I have shown you on page two, under the heading Table Showing the Revised Classification of the Buildings in the Park Plaza Project; and there, they applied some standards -- some standards, Mr. Morris -- that were clearly then used and put in evidence, showing what were structurally sub-standard buildings in that area.

The evidence is, also, as we shall show in the completion now of this presentation on decadence, the evidence is also that, thereafter, there was a hearing held first by the City Council, then subsequently by this Department in April of '72, materials were submitted to your Department on January 13, 1972, including, importantly, these two memoranda, May 27th and June 15th of 1970, as well as the Building Conditions Survey forms.

A decision was rendered by this Department on June 9th, 1972, to disapproving the urban renewal plan and, as you will note in that decision, expressly finding and making findings with reference to decadence, that the area was not decadent and they had not applied appropriate standards. Some time thereafter, between that decision and this submission on

November 28, 1972, entirely new classifications were made and entirely different evidence now submitted to you for, as I pointed out to you, in A, B, and C alone, no new survey was conducted. The 1970 evidence has been refashioned to try and conveniently imply with the departmental standards. The evidence that they had previously submitted, they claim, was unchanged. The basic evidence, they say, was unchanged. They only surveyed seven buildings in 1972; and we will deal with those in just a moment in the 1972 base building survey.

They also changed conveniently the blighting influences; before they stated flatly that there were only 20 buildings that had blighting influences. Suddenly, without any further survey, on November 10, 1972, they color in findings that would try and have you believe there were 49 buildings that were blighting influences.

Now, my proposition is a very simple one, Mr. Morris; that in 1970, work was done by the Authority in the manner in which we have outlined and described as to the methodology. I think that work was deficient for those reasons. But, quite apart from that, they submitted their work product as of that time. Subsequently, after they found that the Department had disapproved, they have recast and refashioned that evidence without making a new survey to support their new conclusions.

And I submit that that is doctoring the evidence; that one may not take evidence made two years ago and attempt to reclassify it and refashion it. And I call your attention now expressly to the Introduction to the Building Conditions Report, page seven. And there, you see under Survey Standards, the statement that says, The same standards as employed in the 1964 survey were used in the 1970 survey.

That's an impossibility, Mr. Morris and members of the panel. First of all, these survey standards did not exist in 1964; they didn't exist on January 13th of 1972. And as you can see, if you look at the June 15, 1970, memoranda, that the standards used for the classification of the buildings as set forth on page two of that memoranda, that clearly those standards which were then employed are different from these standards.

MR. MORRIS: Well, Mr. Mahoney, we followed this, we have all the documents and you made a very careful reference to the inconsistencies that have seemingly appeared in the documents relative to your case, in trying to show that there's not sufficient evidence of decadence by a proper standard to make this finding. I gather that that's what you are trying to do. But, you keep alleging these forms have been doctored.

MR. MAHONEY: They have, sir.

MR. MORRIS: I asked you this question yesterday.

Before you complete this argument, other than the fact that their latest submission appears to speak for itself as an exhibit, how do you pinpoint this phrase that you continue to use, rather than allow them, as a public agency, to state that they have submitted a new method of classifying the buildings? How do you pinpoint that? I take notice of everything you say.

MR. MAHONEY: Mr. Morris...

MR. MORRIS: I want you to have full opportunity, now, if you are going to use this term.

MR. MAHONEY: I am.

MR. MORRIS: And state that the Commissioner in his review, which you stated earlier when you asked for the ruling, that in some way he would be obligated to look now to this thing that you specify as almost being a fraudulent type submission.

MR. MAHONEY: I think the characterization is apt.

MR. MORRIS: No. I am asking you, is that your characterization?

MR. MAHONEY: Yes, sir; it is.

MR. MORRIS: Then, for the record, you are stating that the submission of November 28th, that you offered as Exhibit 42, with that phrase that you quoted, is not an accurate statement; that the standards employed were the same as used in the '70 survey?

MR. MAHONEY: Yes. Yes, of course, Mr. Morris. Of course. It's evident; it's clearly evident.

MR. MORRIS: You are calling that merely to our attention.

MR. MAHONEY: Yes, sir.

MR. MORRIS: Do you think that should interfere with our evaluation on our own of the documentation submitted?

MR. MAHONEY: Yes, sir, Mr. Morris, because I think you can see the material you have received previously and this material are in conflict, and very serious conflict. It's overwhelmingly apparent. You take the material in the prior submissions, and I have referred you expressly to the prior surveys, as submitted, and their own summary of those surveys, which they submitted, namely, the May 27, 1970, and the June 15, 1970, summaries, which are clear evidence of their classifications then used, you then take the current evidence now submitted and attempt to identify where the additional buildings have come from, when, in fact, there have not been new surveys as to whether a building is deficient, substandard, or standard, or as to blighting influences. If you take both of those, both categories, both of which, as you know, under the departmental standard, are applicable, what they have attempted to do is to recast the 1970 evidence as of 1972. That's tampering with

evidence.

If they wanted to do this, the appropriate way, if it could stand the light of day, would have been to have done a new survey and come in with contemporaneous evidence worthy of proof, not change the evidence in order to attempt to recast it.

MR. MORRIS: Well, it is my understanding there was some type of survey done at someone's request.

MR. MAHONEY: Yes; I am going to deal with that right now.

MR. MORRIS: They did go out and look at seven, eight, or nine or ten buildings. Now, you make a flat statement that they have apparently done nothing in the way of any new survey.

MR. MAHONEY: No. I am going to deal with that right this moment.

MR. MORRIS: You didn't deal with it a moment before.

MR. MAHONEY: Yes, sir; I did.

MR. MORRIS: I got the impression nothing had been done. I got that impression.

MR. MAHONEY: I beg your pardon, Mr. Morris. Let me clarify this once more for you, Mr. Morris. In 1972 -- and this has already been in the record several times -- they surveyed seven buildings. Seven buildings.

MR. MORRIS: Additional buildings?

MR. MAHONEY: No. They are seven of the buildings of the 120 within the project area.

MR. MORRIS: Right.

MR. MAHONEY: I have already identified what those seven buildings are. I'll be glad to do that again, if that is necessary.

MR. MORRIS: No.

MR. MAHONEY: That is less than six percent.

MR. MORRIS: Before you proceed, you gave us these separate sheets to follow your testimony on this key point.

MR. MAHONEY: Yes, sir.

MR. MORRIS: Now, are any of these seven buildings on these sheets? Of course, we have to ask some questions here.

MR. MAHONEY: I'm glad you are asking the questions.

MR. MORRIS: You know, you have been speaking for hours now, and we are beginning to...

MR. MAHONEY: Mr. Morris, I think you are getting to the point I hoped you would get to.

MR. MORRIS: I hoped I'd lead you there.

MR. MAHONEY: I now would like to hand you a request for you to get some evidence from the Authority. I have been waiting for you to come to that point, Mr. Morris.

MR. KOVEL: These are copies; are they?

MR. MAHONEY: These are copies. Off the record.

(Discussion off the record.)

MR. MORRIS: Well, I think, before I read this into the record, or even consider it as an exhibit, again, Mr. McCann... is it?

MR. McCANN: Yes, sir.

MR. MORRIS: The intent here is that counsel wants to put in a letter as of today's date. I think you ought to show counsel the letter.

MR. MAHONEY: Excuse me; I'm sorry, Mr. Morris.

(Document to Mr. McCann.)

MR. MORRIS: Rather than read it to you, I will allow you to read it. Do you have any objection to me putting this in the record? If you do, you may state your objection.

MR. McCANN: Two requests made deal with what the record already indicates. The previous submission of the Authority is not under consideration here; that the November, 1972, submission is the one being considered now by the Department. I think the record is clear and if anyone took the time and effort to go through and determine it, the survey sheets determine which buildings were standard and which were substandard.

MR. MORRIS: Well, I'm going to read the questions into the record. I don't think that that is unreasonable to

answer. If you have all your documentation, I will allow a necessary recess, if you want to look at your own documents.

MR. McCANN: Our building survey sheets are part of the record. On each sheet is indicated what buildings are sub-standard and which buildings are standard; that I am not about to do Mr. Charles Mahoney's legal work, nor am I about to participate in his presentation. So that, I believe the answers are already in the record and it needs no further explanation.

MR. MORRIS: Do you want to reply to that before I put the question to you?

MR. MAHONEY: I would. Thank you, Mr. Morris. First of all, I would, of course, like to say I'd be glad to go on with my presentation and allow the Authority whatever reasonable time it felt was convenient for it to put this answer together.

I would like, however, to say to you, since he believes this material is already in evidence, that I was now about to begin to touch on the area your questions had come to, namely, what about the additional buildings that were surveyed and which buildings were changed? And the point is that I think Mr. Mangini, in whose section this issue comes, is that the very relevance is that I'm asking the Department to ask the Authority, I'm not characterizing their work, I want them to be able in this record to answer two very important questions that go right

to the heart of what the changes are that have occurred here and will reveal to you, without doubt, that without a new survey, changes have, in fact, been made.

Now, they said originally, and you have the evidence already in exhibits, 15 buildings were substandard. You will note in the May 15, 1972, document -- that's May 15, 1972, Exhibit No. 47 -- that as of that date, neither you nor I, Mr. Morris, could go through that volume for 1,000 days and be able to identify which of the 15 buildings were substandard.

I urge you to please look at that volume and you will see on its face that the Department nor I could not determine which of the 15 the Authority then said were substandard. Exhibit No. 45. That's the one. They are not labeled, as you can see. We have two things that one can compare, the June 15th memorandum, which summarizes their findings and says there are 15, and then we have some unidentified parcel numbers.

Now, the Commissioner himself, in his letter of June 9th, said that it was impossible to identify those.

MR. MORRIS: Fifteen?

MR. MAHONEY: Fifteen.

MR. MORRIS: You are merely asking a rhetorical question and you know I can't find the answer for you.

MR. MAHONEY: Neither you nor I could. Only the

Authority has that information.

MR. MORRIS: Will you be pleased if I read these questions into the record?

MR. MAHONEY: And if the Department will ask the Authority to produce that material.

MR. MORRIS: The record will speak for itself. We have already suggested that reasonable questions will be asked; but, if you state this is impossible...

MR. MAHONEY: Oh, no; it's impossible. Mr. McCann suggested, sir, that you -- the Authority -- that you, the Department, have that material and that I should be able to do that.

I'm pointing out to you, sir, that on the materials they have submitted, neither the Department, as it is stated in its finding on June 9, 1972, nor I, are in a position to be able to do that. It's an impossibility, Mr. Morris.

MR. MORRIS: They can't even answer it.

MR. MAHONEY: Yes, sir; they have the materials. I urge you to look at the June 15, 1970, memorandum. There, they classified 15 buildings as substandard. I think it's a reasonable question to ask, Which 15 buildings?

MR. MORRIS: Well, we will rule as follows: No. 1, the letter from Mr. Mahoney will be entered into evidence and

labeled as Exhibit No. 48. I will put it into evidence, and you can copy this letter verbatim into the record.

(EXHIBIT NO. 48.)

"January 24, 1973

Commissioner Miles Mahoney
Department of Community Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Re: Park Plaza Hearings - Chapter 121B, Section 48

Dear Commissioner Mahoney:

You will recall that at the hearing yesterday the testimony was devoted to the issue of decadence. In that connection, at the point at which we recessed, I have begun to raise various questions with regard to the Authority's 1970 survey.

I hereby respectfully request that the Department ask the Authority to forthwith answer the following two questions:

1. List the 15 buildings which the Authority stated were substandard in Parcels A, B and C as of the date of the last hearing, giving parcel number, block number, and name and address of owner.
2. List the 8 additional buildings which the Authority stated were substandard in Parcels A, B and C as of the date of its resubmission on November 28, 1972, giving parcel number, block number, and name and address of owner.

Very truly yours,

s/Charles Francis Mahoney
t/Charles Francis Mahoney."

MR. MORRIS: With regards to the Authority, we ask them to take notice that, at this point in the proceedings, these two questions have been asked and should be transmitted to the Boston Redevelopment Authority for a reasonable and appropriate answer which may be included in the record, other than the answer you gave when you stood up, Mr. McCann. All right. Your next point, Mr. Mahoney.

MR. MAHONEY: Thank you. Now I would like to ask you, if you would, to please turn your attention to the seven buildings...

MR. MORRIS: Are you still on the decadence section?

MR. MAHONEY: Yes, sir; the 1972 portion.

MR. MORRIS: 1972.

MR. MAHONEY: ...to the seven buildings that were resurveyed in November of 1972.

MR. MORRIS: Proceed.

MR. MAHONEY: I ask you to turn your attention for a moment to the seven buildings that were resurveyed. Seven buildings were resurveyed in November, 1972, less than two weeks before the resubmission on November 28, 1972; and the 1970 survey forms and classifications contained therein. They appear in the Building Conditions Report, Exhibit No. 42. Would you kindly look at Exhibit No. 42, November, 1972, and, therein, to two

categories of information. The seven buildings actually resurveyed in 1972 and to the 1970 survey forms and classifications. Now, two distinct matters. They appear at different pages, you will find. This is the point I would like to call your attention to. I will give you a list of these separately. And I represent to you now, if you would like a separate list to make it convenient for you, and it's very unlikely that you will find all seven resurveyed buildings were already classified as substandard. I think that's especially important to note.

Now, we have just been talking about an increase of from 15 buildings to 23 buildings; 15 buildings June 15, 1970, 23 buildings suddenly substandard as of November 28, 1972.

Note in the record of this hearing that the Department asked at some time which I was not present, during the period of ex parte meetings, that seven buildings be resurveyed. I said I'd point out to you a very important fact by the volume you have before you, Exhibit No. 42 -- and I will make a list of the page numbers for you -- if those seven buildings, they were already classified as substandard.

To put it another way, why, if those seven were seven of the 15, because they were already classified as substandard, why were they resurveyed at all? Were they merely surveys confirming the prior fact that they were substandard?

They certainly can't have been surveys that led to the 8 additional buildings. Fifteen plus eight is 23. They're not those eight. That is something that I think is very important for you to note.

So, I'm now saying two things about the 1972 survey. One, it represents six percent of the buildings in the project area, just under six percent, five point something percent--hardly an adequate sample.

Two, it is apparently, by the Authority's own evidence, Exhibit 42, merely a ratification of a finding that they had previously made of seven buildings that were substandard.

Or, to put it another way, Mr. Morris, that information then proves very unenlightening to us; it doesn't add anything new.

It is clear, then, as to the '72 survey, that nothing contained in them can serve to bolster the case of the Authority, which relies very clearly now more and more solely upon the 1970 surveys.

According to what I have called the doctored evidence as of 1970, submitted to you by the Authority in its Building Conditions Report, November 28, 1972, Exhibit 42, there is no logical reason for these seven buildings to have been surveyed. Resurveyed. In fact, the most that can be said in the light of

what has been presented by the Authority is that it ratifies the conclusions as to those buildings only. They were previously substandard; they say they're substandard now. And while I dispute that substantive contention, I point it out simply because that's what it shows; nothing more, nothing less. Even as to this point, however, for the reasons that I outlined in part one of this presentation on decadence, dealing, as you will recall, with standards and methodology, we submit that the '72 survey actually fails to establish any such classification or determination for these seven buildings upon which a finding by this Department can rest.

Before turning our attention, now, to the subject of buildings warranting clearance to remove blighting influences, based again upon the 1970 Authority's survey, it is important to note that the Authority has failed to establish on any rational, creditable, or basis grounds for a finding that 23 of the buildings in parcels A, B, and C are substandard warranting clearance as of 1970. They have failed to do so because it is evident from a review of their own evidence that they have altered, changed, or doctored the 1970 survey classifications. We also point out their own evidence is inconsistent. It added eight new buildings that they would have you believe are substandard warranting clearance as of June, 1970...As of June, 1970...when,

in fact, all of the past evidence submitted by the Authority clearly establishes that there are only 15 such buildings in June of 1970 and that the Authority so admitted and so acknowledged that fact at least as late as May 15, 1972.

I refer you, again, to Exhibit No. 45 to support that contention.

Finally, with reference to the issue of the classification of these buildings in parcels A, B, and C, as substandard warranting clearance, we submit that for all of the reasons relating to methodology and standards previously discussed in part one of this presentation on decadence, that the Department may not make a finding that there are buildings within parcels A, B, and C -- buildings within parcels A, B, and C -- that are substandard warranting clearance.

We would now like to ask that you turn your attention to the Authority's representation of the number of buildings warranting clearance to remove blighting influences.

Would it be appropriate to take a brief recess?

MR. MORRIS: I was going to suggest a recess for five minutes. Thank you.

(Recess.)

MR. MORRIS: All right, the hearing will resume.

CHARLES F. MAHONEY, Resumed

MR. MAHONEY: May we now turn our attention to the Authority's 1970 representation of the number of buildings warranting clearance to remove blighting influences.

Again, on May 27, 1970, in Exhibit 43, Mr. Vincent in his memorandum to Director Warner said that all of the buildings in the project area had been resurveyed. That appears at page three. And I give you for your convenience extra copies, Mr. Morris. That is at page three only of that memorandum. You will note at the top of the page that he states that all of the buildings in the project area had been resurveyed and compared to the 1964 findings through exterior surveys. Exterior surveys. As of May 27, 1970, the interior, the 61 interior surveys that were done, you will recall, on June 9th, 10th, and 11th, had not yet been done, but all of the exterior surveys, he says, had been done.

He then lists a table showing the new breakdown by classification, that, "Only 20 of the buildings in parcels A, B, and C warranting clearance to remove blighting influence, based on the Authority's 1970 survey, which had just been completed. Nothing contained in his memorandum. And excuse me; let me pause for just a moment. For your convenience, Mr. Morris and members of the panel, I had bracketed the parcels that are A, B, and C. Again, they are S2B3A, S2B3B, S2B4A, and, down at the

bottom of the left-hand column, again, 393, 394, 397A, and 396 - 407. And, if you will note that, as to buildings warranting clearance because of blighting influence, that totals 20. Nothing contained in the memorandum of June 15, 1970. That's the memorandum that was compiled a few days after they had just completed the 61 interior surveys, added any additional information, and I urge you carefully to examine the June 15th memorandum as to the number of buildings warranting clearance to remove blighting influences.

So, the May 27, 1970, memorandum is the memorandum which showed the Authority's classification of buildings to remove blighting influences, again made contemporaneous with the surveys they had just then completed. You will note on that chart, on page three, in the May 27th memorandum, that there are four of the buildings in S2B3A; that of those four, only one warrants clearance to remove blighting influences. In S2B3B, only two of the 13 buildings were found to warrant clearance to remove blighting influences. In S2B4A, none of the buildings were found warranting clearance to remove blighting influences. And in block 393, 13 of the 42 buildings were found to warrant clearance to remove blighting influences; in block 394, three out of the eight buildings were so found; and, in block 297A, one out of two; and, in block 396 - 407, none of the buildings

were found required to be cleared to remove blighting influences.

As I have stated, 20 of the 71 buildings in parcels A, B, and C were found warranting clearance to remove blighting influences. Why is it, then, that in the case of each and every building that had been surveyed in 1964, 1970, and 1972, by the Authority or persons employed by them, we are now told as of November 10, 1972, that each such building is a blighting influence warranting clearance, as certified by Mr. Warren J. Vincent. Those certifications are in direct conflict with Mr. Warren Vincent's memorandum of May 27, 1970, when he then represented contemporaneous with his having completed the survey as a summary of what the members of the Authority's staff had determined as a result of the 1970 survey.

MR. MORRIS: Is that a question you want answered, or are you merely making this as part of your presentation?

MR. MAHONEY: It's part of my presentation, Mr. Morris, which I think will be answered through this presentation.

MR. MORRIS: I see.

MR. MAHONEY: I suggest that it is important for you to understand the context of this newly produced evidence, and I ask you to look at the current November, 1972, Building Conditions Report submitted by the Authority. There you will note, under date of November 10, 1972, following the rejection of the

urban renewal plan for Park Plaza by this Department on June 9, of '72, the Authority must finally have recognized that it was necessary for them to meet the departmental requirements that more than 20 percent of the buildings must be structurally substandard, requiring clearance and additional clearance and in an amount bringing the total to more than 50 percent of the buildings must be warranted to remove the existing blighting influences.

Unfortunately, however, the Authority is faced with a considerable problem. They have previously testified to this Department, based upon the 1970 surveys of the Authority, which information was submitted to the Department on January 13, 1972, and at the hearings in April of 1972, that only 15 out of the 71 buildings in parcels A, B, and C, or 21 percent, were structurally substandard warranting clearance, and that only 20 of the 71 buildings, or 28 percent, were blighting influences warranting additional clearance, and in an amount bringing the total to less than 50 percent of the buildings in parcels A, B, and C.

Therefore, by the Authority's own figures, they have proven the case against total clearance and redevelopment; thus, following the June 9th disapproval by this Department, the evidence has sought to be remade by the Authority. Made by the Authority. But, since there have been no additional surveys, except for the seven buildings in 1972, in November of 1972, for

which there are seven 1972 resurvey sheets, the Authority has grossly submitted its 1970 survey reports which, instead of supporting and reflecting the figures previously submitted to you by them as reported originally by members of the Authority's staff, now show changed figures as of 1970 in a vain attempt to persuade you that the departmental standards have been properly met. This evidence is extremely unsubtle; it is wholly transparent. More plainly, it is fraudulent. Any finding based by the Department upon this evidence would, of necessity, be an arbitrary and capricious finding, unreasonable, in that it would not be supported by credible evidence. It would have to be based upon the 1970 surveys of the Authority.

I now would ask you to turn to the building deficiencies map. That is map No. 4 which has been introduced and marked as Exhibit No. 46. Now, I ask you to note that this is the identical map which, in the prior hearing, was also labeled Map No. 4, Building Deficiencies Map. That same map was introduced by the Authority at the hearings before the City Council and before this Department in April of 1972. It has been introduced by the Authority to you in this proceeding as well. It is significant for one very, very important reason. It shows that all of the Authority's evidence as to 1970 is entirely contradictory and not credible, as I shall demonstrate.

You will note that this map, which I emphasize, this map prepared by the Authority, submitted by the Authority to you as its evidence, conflicts grossly with its own 1970 survey reports, with its new building conditions map contained in the pocket of the November, 1972, Building Conditions Report, Exhibit Number...

MR. MORRIS: 42.

MR. MAHONEY: ...42 is right, Mr. Morris. Thank you.

MR. MORRIS: As you said, in the pocket.

MR. MAHONEY: It's in the pocket.

MR. MORRIS: Proceed.

MR. MAHONEY: And it conflicts with the prior figures submitted to you in the supporting documentation, January 13, 1972, pages five through ten. And it conflicts with its newly refashioned figures contained in the Building Conditions Report of November 28, 1972.

This point can be well illustrated by examining parcel S2B3A, as shown on that map.

MR. MORRIS: On which map?

MR. MAHONEY: On Map No. 4.

MR. MORRIS: Please give us statistics.

MR. MAHONEY: This was prepared by the Authority.

The legend, Mr. Morris, for the record, so the comment is clear,

Mr. Kanin has just pointed out for you and called your attention to assist the panel, the legend, interpreted legend, prepared by the Authority, which appears on the map, which, if you would kindly use as I now make this presentation, I think it will be clearer for you...

MR. MORRIS: Thank you.

MR. MAHONEY: ...I ask you to note the Bradbury Building shown on that map is standard. Would you identify the Bradbury Building, Mr. Kanin.

MR. KANIN: This one.

MR. MORRIS: The second building is Bradbury.

MR. MAHONEY: Yes, the second building.

MR. MORRIS: The so-called Bradbury Building.

MR. MAHONEY: The Bradbury Building; yes, sir. That building is shown as standard.

MR. MORRIS: When you say "that building," you mean the Bradbury Building.

MR. MAHONEY: Bradbury Building. Interestingly enough, however, the Authority's 1964 survey sheet shows that the same building was classified as deficient. The same building was classified as deficient.

Please note that the 1970 survey sheet for the Bradbury Building, please note that on that sheet it states that

it was deficient in '64 and that, in 1970, it was substandard. Let me repeat this, now. We have a very interesting set of Authority figures, and we can go through this building by building to show they're wholly illogical, arbitrary, and really totally contradicting evidence on this point.

First, let us refer to that map, that No. 4 before you, and you'll notice that on that map it is shown in standard. That map is dated in June, 1971, resubmitted to you November 28, 1972. Now, we go back, and you look, if you would, please, in the Building Conditions Report submitted by the Authority. Mr. Kanin, do you want to point to that.

MR. MORRIS: The November submission.

MR. MAHONEY: Yes, sir. I ask you now -- and Mr. Kanin is pointing to it in that volume submitted to you on November 28, 1972, by the Authority -- I underline this is not our evidence, Mr. Examiner, this is the Authority's evidence; that in the 1964 survey, it shows that the same building was deficient. You will also see that, if you will now look at the 1970 survey sheet for that building, it shows that it was substandard. I also now ask, if you will, please, to look at the summary sheet for the 1970 survey...Would you show them that, please, Mr. Kanin...for this building.

MR. KANIN: They are looking at it.

MR. MAHONEY: That sheet, you will see, is an example of how a building was judged on the basis of the Authority's 1970 survey to be substandard. Here we have a building which, as I indicated a minute ago, was found to be deficient in 1964. You will note that a building permit was taken out, since 1964. You will also note that the work, in fact, was carried out and, as noted in the comments, the work was complete; but, mysteriously, there appears the wholly unsupported averment, "This work only involves store front and did not correct structural defects."

Now, that's the sole evidence of the Authority to move this valuable building from its 1964 survey, which was detailed, very detailed, done by its prized engineers, the Charles T. Main Company. There, they said, it was only deficient. Then, in 1970, and that sole sheet is the sole evidence -- no other evidence supporting that -- that building would be condemned and used to rip down this entire area of the city, by getting to its magic number game. No rational basis for such a finding. And then, inexplicably, in June of 1971, if you will look at the Building Deficiencies Map No. 4, look at that same building, as I stated a moment ago, that building for the first time is shown to be what it truly is--standard. Thus, in this single block, with reference to this one building, we have seen, on the basis of the Authority's own evidence, serious and very substantial

conflict with reference to the classification of buildings made by the Authority and the basis therefor.

Now, in this same block, may I direct your attention to the Avis Building. I now direct your attention, kindly, to the Avis Building in this same block, as shown on the Building Deficiency Map No. 4. There you will note it is shown as sub-standard; however, the Avis Building was classified in 1964 by their prized engineers as standard. Thus, we have an instance where the 1964 survey by engineers found the building to be standard. No survey was conducted in 1970, but the Authority, perhaps because it felt the need to establish a case for wholesale clearance, colored the block on the map as grounds for a rip-off of this area.

Next door to the Avis Building is the property of Oxman. You will note that, on the Building Deficiencies Map No. 4, this building is classified as standard. Let us look at the 1964 survey as found in the Building Conditions Report and there you will find this building was classified by the Authority as deficient. Would you show them that, Mr. Kanin.

I asked you to look originally at the map, and you will note there it was classified as standard. Here, however, in the '64 survey, again on the Authority's evidence, no representation of mine, Mr. Examiner, you'll notice that it is

classified as deficient. In 1970, however, on the basis of an exterior survey only -- Let me underline that. On the basis of an exterior survey only -- the building was reclassified as sub-standard. Note they say, if you can believe that substandard classification, and I urge you not to, you will note that they now want you to believe in their remade evidence that it's sub-standard, but they forgot to change their map which they submitted to you in this evidence, which says they found it to be standard. The map, once again, was more honest because, I represent to you, and as their own facts and figures will show you, this particular building had \$150,000 worth of major renovation work done on the building. That work has been approved by the Building Department of the City of Boston since the 1964 survey when it was understandably rated as deficient. This building, again, demonstrates the arbitrary capricious, irrational, and fraudulent nature of the Authority's own evidence. Their sole case rests upon these 1970 surveys.

Let us press on and see how the contradiction does not follow. We ask, Why the serious discrepancies in the classifications? What survey classification was the B.R.A. cartographer really using when he prepared the 1971 map? Please note that this map was resubmitted to you in 1972, and hence, I call your attention back, if I may, to the Introduction to the

Building Conditions Report, November 28, 1972, and you will note where they state that they had clearly adopted standards, that they claim were employed in 1970, and I call your attention to Map No. 4, the Building Deficiencies Map, and then to their remade surveys of 1972, for the year 1970, and you will see clearly beyond doubt that they did not have any such standards when they made these surveys, and they didn't have those standards when they made the 1971 map. They looked at the fact that Commissioner Mahoney rendered a decision on June 9, 1972, and they tried to doctor the evidence to conform to the building standards for building deficiency and environmental deficiencies of this Department.

The same discrepancy on the building condition surveys appear on the map in a number of other buildings. In fact, a careful analysis of the Authority's own evidence of decadence for 1970 comparing these elements, first, the 1970 survey report submitted in the supporting documentation, January 13, 1972, to the Department; second, the 1970 survey forms on the one hand and classifications on the other, contained in the November 28th submission; third, the Building Deficiencies Map No. 4, submitted January 13, 1972, and resubmitted November 28, 1972, reveals many instances wherein their own evidence is seriously conflicting and contradictory and unsupported as to parcels A, B, and C.

We submit it is clearly evident that the 1970 survey of the Authority cannot be used as an honest or reliable measure of decadence, nor for the purpose of determining whether an area is eligible for clearance and redevelopment in accordance with the definitions of this Department.

The methodology employed, the standards used, the conflict in their own evidence, the obvious doctoring of that evidence after the June 9, 1972, decision disapproving the urban renewal plan makes it overwhelmingly clear that the evidence before you, based supposedly on the 1970 surveys, is not reliable for the purpose of permitting this Department to make an affirmative finding of decadence. For the Department to do so on the basis of this record would become an arbitrary and capricious act and would, I submit to you, be clearly reversible error. The Department would put itself in the unenviable position of having to defend the Authority's doctored evidence.

Thus, it is clear, as the Department itself found on June 9, 1972, that the 1964 surveys are too old to be relied upon. They also were unworthy of reliance because of the methodology used and the standards employed as set forth in part one of this presentation yesterday.

The 1970 surveys cannot be relied upon for the reasons which we have stated; the 1972 survey of the Department

is so incomplete, is such a small sample, six percent of the buildings within the project area, that it cannot serve as a reliable basis for a determination by the Department of decadence or of eligibility for clearance and redevelopment. It, too, suffers from the same defects as the 1964 surveys, both as to methodology and as to the standards employed.

I now would like to turn to another subject heading, still under the section on decadence--Failure of the Authority to Establish the Existence of Environmental Deficiencies. We have now dealt with building deficiencies and blighting influences. As you will recall, the Department may not determine an area is eligible for clearance and redevelopment or for rehabilitation treatment unless it has first made the more basic determination that an area is decadent or substandard.

The Department's regulations require that at least 20 percent of the buildings in the area contain one or more building deficiencies, and we have commented at length about our belief that the Authority has failed to show even this, and that the area must contain at least two or more environmental deficiencies. At least two or more. See page 271 of the Department's regulation.

In addition, the Department requires that the environmental deficiencies necessary to establish the eligibility

of the project area must be present to a reasonable degree in all parts of the area. If any sizable portion of the area fails to meet this test, it must be justified by one of the two following criteria:

First, inclusion of the part is necessary to achieve urban renewal objectives for the total project area.

Second, inclusion of the part is necessary to bring the project area to a sound boundary.

I will not burden you by recounting the eight environmental deficiencies listed by the Department in its regulations. I'm sure you are familiar with them. I would like to take a few moments to demonstrate the Authority's own evidence that shows its total failure -- total failure -- to meet the requirements that at least two environmental deficiencies are present in all parts of the area proposed for redevelopment in the case of both parcel A and parcel B.

The introduction to the Building Conditions Report, dated November, 1972, states, at pages 10 through 12 -- pages 10 through 12 -- that, of the eight environmental deficiencies listed in the Departmental regulations, three were present "throughout the project area." They were (1) unsafe, congested, poorly designed, obsolete, and deficient streets; (2) incompatible types of uses; and (3) overcrowding of structures on the land.

Let us now see through an examination of the summary sheets for each of the buildings in parcels A and B whether these three environmental deficiencies, indeed, whether even two of these environmental deficiencies are present throughout parcels A and B. The summary sheets for each parcel in the Building Conditions Report, November 28, 1972, Exhibit No. 42, list six possible six possible blighting influences. And may I suggest that you take one of those coversheets, Mr. Mangini, you might refer to any one of those, they're all identical forms that were mimeographed, any one will do. It lists six possible blighting influences, the existence of any one of which the B.R.A. believes is justified for removing the building.

The first three blighting influences listed correspond almost exactly to the three environmental deficiencies which the B.R.A. claims, at pages 10 through 12 of the introduction to the Building Conditions Report, are present "in all parts of the project area." And those are (1) inadequate street layout; (2) incompatible uses of land or use relationships; and (3) overcrowding of buildings on the land.

I say this, although I recognize they are not verbatim, the environmental deficiencies, I think any fair-minded person would have to concede they are substantially the same, and so I have, for purposes of this argument, given them the

complete benefit of the doubt and applied these standards as though they did, in fact, correspond to the departmental standards.

Parcel A -- and would you show them, now, on the map, on parcel A, Mr. Kanin, on the Building Conditions Map taken from the pocket of the Building Conditions Report dated November, 1972, Exhibit No. 42 -- includes the following blocks: S2B3A, 394, and the western half of 397A, 396 - 407, and S2B4A.

Of the 15 buildings located in parcel A, all of those that were surveyed show evidence, according to the Authority, of inadequate street layout; therefore, they have shown on paper that at least one environmental deficiency is present throughout parcel A. But, in order to establish that parcel A is eligible as a decadent area, they must show that one of the other two environmental deficiencies they list as being present throughout the project area exists throughout parcel A.

The second environmental deficiency, again, is "incompatible types of uses." But, only one of the 15 buildings in parcel A was an incompatible type use according to the Authority's own evidence; and again, we do not concede this evidence, I am merely pointing out their own evidence and how it fails to meet your standards.

The third environmental deficiency listed by the

Authority was "overcrowding of buildings on the land." Only two of the 15 buildings in parcel A fell into the third category. Clearly, only one of the three environmental deficiencies which the Authority claims existed throughout the area, namely, "unsafe, congested, poorly designed, and deficient streets," was present throughout parcel A. We dispute that factually, but I'm taking their own evidence here.

Let us now review the survey forms for the buildings in parcel B, or known as block S2B3B. Of the 13 buildings in parcel B, the Authority again alleges that all suffer from the environmental deficiency of 'inadequate street layout. Not one of the 13 buildings in parcel B, not one single building evidenced either incompatible types of uses or overcrowding of buildings on the land. In other words, in parcel B as well, the Authority tells you that their best evidence, after they have entreated the Governor of this Commonwealth, the General Court, and this Department to let them resubmit this plan, and pressured this Department and the Governor of this Commonwealth with hardhat rallies on the steps of the State House, they tell you that there's only one environmental deficiency in parcel B. That's their best evidence. And they told you the same as to parcel A.

Let us now examine A and B on the Building Conditions Map submitted by the Department on November 28, '72. The area

enclosed by the bold black border is the entire project area, parcels A, B, C, D, and E. Carver Street, which you can see on the map here, divides parcels A and B from the rest of the project area; A and B. Inclusion of part A and B is obviously not necessary to bring the project area to a sound boundary. Carver Street already forms such a boundary. We do not believe that the inclusion of parcels A and B is necessary to achieve urban renewal objectives of the total project area. Urban renewal objectives, we have been led to believe over the years, must be related to a valid public purpose and must involve at an absolute minimum under our Court decisions and law the elimination of decadence, substandard conditions, or blighted, open areas.

If parcels A and B cannot by the minimal criteria set forth in the Department's regulations qualify as a decadent area, clearly no urban renewal objectives can be said to apply to these parcels; thus, the evidence which the Authority itself submits in the Building Conditions Report on November 28, 1972, incontrovertibly establishes that parcels A and B do not contain at least two environmental deficiencies and that, therefore, these in no way qualify as decadent areas. In short, by the Authority's own evidence on resubmission, apart from all other considerations that I have heretofore outlined on this subject, parcels A and B cannot be found to meet the initial eligibility

criteria of the Department to determine the area decadent.

And let me say, before I move, now, to the next section here, that it's an interesting thing, Commissioner and members of your panel, that the common sense reaction of the people throughout this area, who are not experts, such as you are or the members of your panel who live and who work here, who see those buildings, every person who has appeared before you in opposition to this plan has, in one way or another, said to you that this area, particularly the so-called Park Square area, the upper area, is not a slum area in the language that a layman would use; and even when one applies, as I have tried to do, your sometimes difficult and sometimes elaborate but no less technically proficient standards, they lead happily to the same common-sense conclusion.

The Authority has stood on its head, after generating enormous political pressures and accusing people in the highest places of the Executive Department of this government of conspiracy and other acts and, through its spokesman, the Mayor, has attempted here to now cause the people in this area, again, enormous economic suffering. They have been subjected to an onslaught by this outfit, in plain language, since 1964, and to enormous pressure since the date of the first submission of the Park Plaza Plan, and now particularly since the date of the

resubmission, and here we are, all these months later and all this expense later, and I can't begin to tell you how much money that your own Department and of your own time that must have been spent, and of the economic suffering that has gone on in an area; it just seems to me it is literally a disgrace that this incompetent public agency that should be protecting the people of the City of Boston and acting in a responsible manner, not out to try and covet the property of private individuals, that they want to hand over to some well-connected developers.

I'd like now to turn to the Analysis of the Individual Building Surveys in Parcels A, B, and C. I propose here to show you...

MR. MORRIS: Mr. Mahoney, you are entering a new phase?

MR. MAHONEY: The final section on decadence.

MR. MORRIS: You are still on decadence.

MR. MAHONEY: Yes, sir.

MR. MORRIS: Can you finish in 15 or 20 minutes, before we adjourn for lunch?

MR. MAHONEY: No. It will probably take me 40 minutes.

MR. MORRIS: In that event, why don't we break now.

All right. We will declare the hearing recessed until 1:15.

(Luncheon recess.)

AFTERNOON SESSION

MR. MORRIS: Ladies and gentlemen, the hearing will resume. Mr. Mahoney.

CHARLES F. MAHONEY, Resumed

Mr. Morris, I would like now to turn to the actual analysis and survey of the individual building surveys for parcels A, B, and C.

As you know, in 1964 and in 1972, there were surveys made by Charles T. Main, Incorporated, and, in 1970, by the Authority's staff and now classified for all three survey years by the Authority's staff for parcels A, B, and C.

MR. MORRIS: Now, Mr. Mahoney, are you going to proceed along the same lines as this morning, or is this a new heading?

MR. MAHONEY: This is a new argument. It is an analysis of the individual buildings surveyed. Individual buildings surveyed and classified. I'm going to take the 23 buildings now and analyze those buildings.

MR. MORRIS: Well, now, we have been very responsive so far to your method of proceeding with a narrative-type presentation, without other witnesses, and referring to the record and, also, inserting into the record evidence of a nature which you deemed to be connected with the submission of the

Boston Redevelopment Authority. Is that a fair statement? We so far have allowed you to introduce evidence and ask questions -- frame questions -- to the Authority and to the Department requesting them to ask for information.

MR. MAHONEY: Within limitations; yes, Mr. Morris.

MR. MORRIS: Within certain limitations. At this point, for the panel, as Hearings Officer, I would like to know whether or not the Boston Redevelopment Authority, at this point in the proceedings, intends to produce either Mr. Kenney, who is one of the principal witnesses representing the Authority as a board or such other representative at these proceedings, either for shedding whatever light he might shed on some of these questions or on furnishing information of his own knowledge and belief as to some of the allegations made by Mr. Mahoney or, in addition, furnishing the Commissioner, through me, with such other data or information as he might have that might be relative to these findings.

That's a rather long paragraph, but the spirit of it is, is Mr. Kenney going to appear here during these proceedings or isn't he, at this point in time and space? And will a representative of Mr. Kenney or some other person in a position to give reasonable answers to some of these questions appear?

MR. LACROIX: Mr. Morris, the Authority will have a

response; we are preparing it at this time. It will either be given to you before this hearing closes or within the 10-day period. That is my best information at this particular moment.

MR. MORRIS: All right. Let it be stated for the record that, of course, the panel and the Hearing Officer and the public would prefer to have this done during the proceedings rather than later, after the hearings are concluded. We are searching now for a method of closing out these hearings and giving counsel an opportunity to present his case. We would like it on the record. We have at least, again, asked you to have the principal parties here present to answer some of these questions; and the Commissioner, obviously, is interested in this.

Now, are all parties clear as to the statement I just made? We would still like the B.R.A. to have Mr. Kenney or some authorized person here at these proceedings before they conclude, not for the purposes necessarily of cross-examination but to give responsive answers to some of the questions that have come up in the last several days to the testimony of counsel here for these opponents.

All right. With that on the record, we will proceed. Further, I will state we are going to continue the hearings and, rather than concluding at 3:15 this afternoon, which I had announced this morning, we will either be in this room or move to

another room so we can continue the proceedings until a reasonable hour, in an effort, of course, to conclude, if we may. If we cannot, I would like you to assess your time, Mr. Mahoney, within an hour or two and let me know how much more time you think you will need.

MR. MAHONEY: I will, Mr. Morris.

MR. MORRIS: Thank you.

MR. MAHONEY: May I proceed?

MR. MORRIS: I am through.

MR. MAHONEY: Thank you, Mr. Morris. We have been told that 23 of the 71 buildings in parcels A, B, and C are now classified as structurally substandard warranting clearance. I would like to examine some of the 23 so-called substandard buildings in the light of the actual survey materials submitted by the Authority as contained in Exhibit No. 42, and I respectfully ask that you now turn your attention to Exhibit No. 42, which is the Building Conditions Survey submitted by the Authority on November 28, 1972.

The first building I would like to ask you to review is the so-called Sarni Cleaners' building shown on the Building Conditions Map submitted November, 1972, as building identification No. 9/1. 9/1. I will also give you for your convenience, Mr. Morris, Xerox copies of these taken from that, but I am giving

you the parcel numbers from the map, Mr. Mangini, so you will know the source of the building identification number.

MR. MORRIS: Now, Mr. Mahoney, how many of these buildings do you intend to analyze in this method?

MR. MAHONEY: There are a total of 12 buildings, Mr. Morris; but, as you will see, some of them appear on the same survey sheets.

MR. MORRIS: In the interest of time, can you make some preliminary statement as to what you intend to show, so that we may have some reason for adopting these into the record, without you going into all this detail?

MR. MAHONEY: I don't think that I could do that, Mr. Morris.

MR. MORRIS: You don't think you can.

MR. MAHONEY: No, sir.

MR. MORRIS: You don't mind me suggesting; do you?

MR. MAHONEY: Not at all, sir. Let us press on. Perhaps we can dispense with this faster than you may think.

MR. MORRIS: We have been pressed out of time and almost out of this room. I am not being facetious. I respect your right.

MR. MAHONEY: I say to you, seriously, Mr. Morris, I hope you will realize the people I represent are beleaguered

by the acts of this Authority, and this is their sole method of redress; and your determination that is to be made here, that is, of the Department, is literally a matter of life and death to their economic interests.

MR. MORRIS: I understand that. But, you are telling me now you have to put in 12 individual cases as to this particular point...

MR. MAHONEY: Yes, sir.

MR. MORRIS: ...to bolster your argument still with regards to the findings which they have made?

MR. MAHONEY: Yes, sir.

MR. MORRIS: And either the findings which we must concur in or make independent findings on; is that what your point is?

MR. MAHONEY: Yes, sir.

MR. MORRIS: All right; proceed.

MR. MAHONEY: I ask you to note that, on the 1964 survey sheet for this building, that ratings of one indicate no deficiency or deterioration; ratings of two indicate deficiency or deterioration of less than 25 percent; a rating of three indicates a deficiency or deterioration judged by the Authority in each case, of course, ranging from 26 to 50 percent; and, a rating of four indicates a deficiency or deterioration of over

50 percent. No rating of four was given by the surveyor in this case. Ratings of three appear in four cases. Cracks in the base material of the inside walls on the first floor; cracks in the base material of the inside walls on the third floor; evidence of leaks in the inside walls of the basement; and, finally, the walls in the toilet rooms are given a rating of three.

You will notice that this first page shows ratings of one in 20 items. On the second page of the 1964 survey, the examiner rated the basement stairs three, the plumbing leaks and corrosion in the basement as three, and the walls with respect to a cracking or deterioration in the interior stairs at three. Ratings of one appear with respect to 11 items. The building was classified as deficient, as one can see from the comment page, if you turn toward the back of that, you will find, on the comment page -- it's the second comment page -- there's a word written 'deficient' by the examiner. This is all taken down, now, from the 1972 Exhibit 42 submission.

MR. MORRIS: You mean page four; don't you, not page three?

MR. MAHONEY: Do you have it? Is that clear, Mr. Morris?

MR. MORRIS: Yes; I see it.

MR. MAHONEY: Now, let us turn with respect to this

same building to the 1970 survey conducted by the Authority only. Only one item on this first page, namely, evidence of leaks in the inside walls of the basement is rated three; forty-three items are rated as one, and the remainder are rated as two.

On the second page of the Authority's 1970 surveys, plumbing leaks and corrosion in the basement are rated as three; every other item on this page is rated as one or two.

Now, if you will turn to the comment sheet for the 1970 survey, you will see that the Sarni Cleaners, for 1970, after significant improvement from its former deficient condition, is now classified as substandard. Is the B.R.A. telling you that every building in Boston with evidence of leaks in the inside walls of the basement and deterioration ranging from 26 to 50 percent in the plumbing of the basement should be demolished?

You may also note that the rating of substandard appears to be both in different ink and handwriting from that of either the surveyor or the countersigner or the project engineer. And we'll let you draw your own conclusions from that fact; and you will find that same fact appears in each of the survey sheets.

You will note that that 1964 survey then was deficient and the B.R.A., however, despite the fact that all of

the ratings were improved, rated it as substandard and, the way the record shows now, made that rating sometime after June 9, 1972. I submit that, even applying their own ambiguous standards, which it would have the power to condemn almost any building in Boston, the Sarni Cleaners' building should not have been classified as of 1970 as substandard warranting clearance.

The point -- let me clarify that if it's ambiguous or not clear -- is that applying their own standard and definition to the 1970 survey, which appears, as you will recall, in the introduction to the Building Conditions Survey Report, Exhibit No. 42, you will find that, 'if you apply their own material, that that building does not -- that one of those critical 23 buildings does not -- rate as substandard. Further, if you apply the departmental definition of a building which is structurally substandard warranting clearance, and which requires that defects or/and deficiencies are "of sufficient total significance to justify clearance," it goes without saying that this building cannot be listed among the 23 buildings classified as substandard warranting clearance.

Now, let me turn to two buildings listed as substandard warranting clearance, which no longer exist. These buildings are the so-called turkish-bath buildings. They are shown on the Building Conditions Map submitted by the Authority

in November, 1972 and identified as building numbers 33/16 and 39/21. In other words, although only one survey was made of the building in 1964, and again only one survey made in 1970, they are counted as two separate structures; therefore, it accounts for two of the 23 buildings classified by the Authority as structurally substandard warranting clearance. In 1964, these two buildings, if you look, now, at the 1964 classification sheet, if you look in the volume of the exhibit, you will find that these two buildings were classified as substandard. They were so classified again in 1970.

I would like, however, to have you examine the 1970 survey sheets filled out by a member of the Authority's staff, who is one of the individuals that managed to survey 16 buildings in three days. As you can see, the first page is not filled out in very much detail. On the second page, the only items rated were parking, roof, penthouse, front exterior stairs, and outside walls. The only ratings with 2s and 1s. The only comment made on the third page is "property is presently vacant and out of business. Could not gain entrance. Exterior survey only. Roof survey done from building next door."

These two buildings were allegedly classified back at the Authority office on the basis of this information as substandard warranting clearance. If ever there was a classification

that was arbitrary and capricious on its face, this is it. Two buildings classified structurally substandard warranting clearance, without an internal survey and with no rating below two on the exterior items.

On November 28, 1972, these buildings no longer existed. The area is vacant. It is now an open area which can no longer be counted as two structurally substandard buildings warranting clearance. We, therefore, call upon the Department, in all fairness, to subtract these two so-called buildings from the 23 buildings which the Authority claims are substandard warranting clearance.

MR. MORRIS: This is to the Redevelopment Authority. Assuming that this fact is correct, assuming this allegation is correct, would such a statement be forthcoming from the Authority to make that type of correction in the submittal?

He's stating that buildings included in the submission did not, in fact, exist; and he's talking in terms of percentages needed in order to declare the area substandard. He's offering evidence to us at this point that certain buildings don't even exist that are included in the submission.

Now, although we have asked you about other questions, I'm merely asking, at this point, can we add this to the list of questions to be reasonably answered by a representative of the

Redevelopment Authority before the hearing adjourns so we will know whether we are dealing with a guess or of buildings that don't exist or with open land or what?

MR. McCANN: I don't believe it would change the percentage, Mr. Chairman.

MR. MORRIS: I didn't mean to imply that. I am merely suggesting it might, because of the number of buildings you are talking about.

MR. McCANN: You are relating to a lesser number of buildings.

MR. MORRIS: The question is, will you answer this allegation; is the building still remaining or not?

MR. McCANN: Mr. Chairman, there's about 10 more that he has to go through. Once we hear them all...

MR. MORRIS: Well, for the record, I'm asking the question now. Find out for the panel whether these turkish-bath buildings that he numbered in the record exist as buildings or whether it's just open land as of the time you submitted the documentation. We'll draw our own conclusions. All right. Do you have a question?

MS. BURNS: I'd like to make a comment. If I annoy the lawyer, I will not make the comment.

MR. MORRIS: Is it a question, Ms. Burns? You can

ask a question. The problem is we are taking testimony, and unless he wants to give up his right to testify at this point and allow you to testify...

MS. BURNS: Who is this giving up?

MR. MORRIS: Mr. Mahoney is in the middle of a presentation. You know I will always recognize you...

MS. BURNS: If he says no, I will sit down.

MR. MORRIS: ...if you have a question to ask.

MS. BURNS: It's a comment I'd like to make on the bookkeeping in the B.R.A.

MR. MORRIS: Will you please hold it? Proceed, Mr. Mahoney.

MR. MAHONEY: All right, let us proceed now, if I may, please, to what will become our fourth example. On Boylston Place is a Mansfield Realty Company building identified on the Building Conditions Map submitted in Exhibit 42 as building No. 22/34. 22/34. According to the Authority in its 1964 survey, this building was classified as substandard. It was reclassified as substandard in 1970. Before you is the rating sheet for 1964. You will note, in the basement, the fixtures received a rating of four -- the fixtures received a rating of four; the walls and all toilet rooms received ratings of three; and the first floor toilet room ceiling was rated three; a few threes

were scattered on the second, third, and fourth floor. On the comment sheet, the inspector remarks that there is copper facing above the third floor which is in poor condition; that the condition of the entire building is from fair to good and that the toilet rooms are in fair condition. This is 1964.

Now, let us look at the sheet for 1970. Almost each and every item on the page is rated one; the utilities and plumbing fixtures rated four before are now rated one; the walls and ceilings of the toilet rooms are rated two; every other item is rated one.

On the second page, again we find that every single item is rated one. The only comment on the comment page is that there is a school on the top three floors, enter through Boylston Street. On the basis of this, the Authority has had the audacity to classify this building as substandard. This is a building not with a single rating below two and is an example of how easily the so-called "defects" which existed six years earlier can be corrected. This is the fourth building which, on its face, cannot possibly be classified as structurally substandard warranting clearance on the Authority's own evidence and using its own standards. Using its own standards.

It goes without saying that, if one were to apply the departmental standards, the same would be true.

Another example of two buildings which the Authority has managed to tar with the brush of one survey alone is 16 Carver Street, identified on the Building Conditions Map as 34/17 and 35/18. This is the building that Mr. Adams, you may remember, when he testified here, said was the most important building historically within the project area. This single survey form filled out in 1964 for these two buildings shows that the only ratings of three were for the following items: Flooring worn, loose, or missing in the basement of this four-story building; and again, in the basement, impervious floor broken, deteriorated, or missing; door, bulkheads missing, and a rating of four for the ventilation of the cellar.

The first comment page contains this comment:

"This building is very old with possible historical significance. The building has been maintained and modernized in the toilets, kitchen, etc., and some ceilings have been redecorated. However, the general structural condition is questionable."

The Authority alleges that this building was classified by it in 1964 as substandard. Six years later, the two buildings were examined again...

MR. MORRIS: Say that again, now. Where is substandard on the form?

MR. MAHONEY: Look at the last page of the comment

sheet.

MR. MORRIS: 1964?

MR. MAHONEY: The '64 comment sheet, and you will see, again...

MR. MORRIS: It's not very clear. Is that what that says at the bottom?

MR. MAHONEY: Yes, sir. That's the way it appears. Their reproduction job and later entry apparently isn't very clear, Mr. Morris.

MR. MORRIS: It doesn't say 'deficient;' it says, 'substandard.'

MR. MAHONEY: Substandard. Six years later, the two buildings were examined again. And again, one survey sheet was filled out for two buildings. Almost every item on the first, second, third, and fourth floors were rated one, meaning, no deficiency or deterioration, as defined by the Authority. The only items rated three were in the basement, and they were base material loose, missing, or broken; in the inside wall, evidence of leaks in the inside wall; floors worn, loose, or missing; utilities supply lines and drain lines; and, also, utilities drain lines on the second floor.

If you look on the second page of their 1970 survey sheet, several items are rated three and four, all relating

mainly to the basement and the utilities. The examiner, who, again, was the gentleman who managed to survey 16 buildings in three days, commented that the floor conditions were damp, that the structure was "basically sound, good condition existing in four units, good condition other than kitchen facilities, small and limited."

The two buildings are rated on the basis of this one building condition survey as substandard. Two buildings, one survey. In light of the fact that one of these buildings is an apartment building and the other is used in conjunction with another establishment, I find it difficult to understand how the Authority can justify classing both buildings on the basis of one survey sheet. Further, the comments with respect to the good condition and the basically sound structure of the building in 1970, and the fact that any deficiencies are limited almost entirely to the basement and utilities drain lines, would not justify the Department making any decision on the basis of substandard ratings given these two buildings. These, now, constitute six of the 23 that do not meet the departmental standards of set standard.

The next one is the gas station at the corner of Stuart and Eliot Streets.

MR. MORRIS: Now, Mr. Mahoney, as I said at the

outset, even though you are getting this on the record in narrative form as counsel, and I'm not suggesting how you plead your case, are you putting these particular sheets in as exhibits at the end? I want to know if you wanted to put them all in at the beginning and then refer to some of them, but you seem to be going through some order of your own. I want to know where you are going. I understand the point you are trying to make. I am interested in having a record that is clear for the Commissioner in the absence of yourself to explain all these detailed sheets and paragraphs and notes and notations, checkmarks and so forth.

MR. MAHONEY: Mr. Morris, it is my understanding that these sheets are contained in Exhibit No. 42, which is the Building Conditions Survey submitted by the Authority, and it was submitted on November 28, 1972, and is headed Building Conditions Survey, November, 1972. The pages to which I'm referring in each case, the parcel numbers that I give, correspond to the way the Authority, for purposes of that survey report, has identified these buildings.

As I indicated, I have taken the identifying numbers from the Building Conditions Map, which is located in the pocket of Exhibit 42, the Building Conditions Report, and in each case one can identify these specific surveys from those. For the record, the copies that I have handed you for the convenience of

the panel, Mr. Morris, are Xerox copies which I have made from those individual buildings that I'm discussing. But, they are already in evidence as exhibits of the Authority in Exhibit No. 42.

MR. MORRIS: All right. Do you gentlemen have any objection to that? Because I'm not identifying these items seriatim as he's bringing up the arguments. You have a right, if you want to, at this point, to object to this particular procedure.

MR. MCCANN: We agree they are already exhibits.

MR. MORRIS: You agree these are already listed as exhibits.

MR. MCCANN: They are valid copies.

MR. MORRIS: If, at any point, you want to question what he is saying, ask the Chair and you can ask a question through the Chair. Proceed, Mr. Mahoney.

MR. MAHONEY: Thank you, Mr. Morris. If we may now call your attention to the gas station at the corner of Stuart and Eliot Streets, that building which is identified as No. 41/2 on the Building Conditions Map contained in the pocket of Exhibit 42, was classified substandard by the Authority in 1970. Let us look at the survey form filled out in that year for this building.

As you can see from the first page of the survey form, the only items rated three were the supply lines and drain lines

of the utilities and plumbing. Let me remind the Department that these are not among the Authority's so-called "structural defects" as defined by them in pages one through 12 of the introduction to the Building Conditions Survey and, more specifically, at page 15 thereof.

On the second page of the survey sheet, not a single item is rated above two. The comment reads "bottom floor rehabed since last survey." Somehow, this building containing no structural defects whatsoever, using either the Authority's or the Department's classification, is nonetheless labeled substandard warranting clearance. I ask once again that the Department take note of the very different handwriting and the intensity of the handwriting of the person who classified the building as substandard as of 1970. It is a clear indication to me, at least, that these classifications were added to the survey sheets, as we have earlier discussed, at sometime other than at the time of the survey. On the basis of the 1970 survey by the Authority, I submit to the Department that this must be the seventh building to be subtracted from the list of buildings classified substandard warranting clearance as of 1970.

We have already spoken at different times during this presentation of the Bradbury Building. I submit again, without repeating what has already been said, that this building

cannot be included among those buildings classified as structurally substandard warranting clearance. This is the eighth of the 23 buildings. This building is identified as 45 over two. The building identified as 49/10 on your Building Conditions Map is otherwise known as the Bachelors 3. The first page of the 1970 survey...

MR. MORRIS: What is the name of the building?

MR. MAHONEY: It is referred to sometimes as the Bachelors 3.

MR. MORRIS: Is that the way it is on the map?

MR. MAHONEY: Sometimes you will refer to it, as you will see in their own evidence, as the Bachelors 3, when we come to that. That's taken from the name of an establishment that's located in the premises.

The first page of the 1970 Authority survey sheet shown before you there indicates that the first, second, fourth, and mezzanine floors contain no items with ratings of three or four. Every item on the first floor was rated one; almost every item on the second floor was rated one; and, those that were not were rated two. The same is true for the fourth floor. On the third floor, one item, "floor sagging or pitched," was rated three. There are some problems with the toilet rooms in the basement, but we do not think these deficiencies are "of

sufficient total significance to," which is the Department's standard to justify clearance.

The second page indicates that all items were rated one or two, except for some roof material which is said to be loose, missing, or deteriorated, and gutters or downspouts missing or deteriorated, which were rated three. We believe that that is evident that these are items which, in accordance with the departmental standard, could easily be corrected at a cost which clearly would not compare with the economic cost of destroying and demolishing this building. Somehow, this building was rated substandard warranting clearance. We suggest to the Department that this is the ninth building which, on the basis of the B.R.A.'s survey forms, does not belong in its own category using either its own definitions or those of the Department.

On the Building Conditions Map, you will please note the building identified as 72...

MR. MORRIS: Are you through with Bachelors 3?

MR. MAHONEY: Yes, sir.

MR. MORRIS: Now, on the last sheet, where it says 'substandard,' when, in your opinion, was that placed on this form?

MR. MAHONEY: All that we know in evidence, Mr. Morris, is that it was not there on May 15, 1972; and I refer you

expressly to the Authority's exhibit which was introduced in evidence and marked this morning as Exhibit No. 45. Exhibit No. 45.

MR. McCANN: It is not the Authority's exhibit.

MR. MORRIS: Do you have a comment?

MR. MAHONEY: He understandably wants to back away from his handiwork.

MR. MORRIS: No. I just wanted to ask him a question. Do you have a comment?

MR. McCANN: It's only that counsel has referred to Exhibit 45 as the Authority's exhibit; that it was put into evidence by Charles Mahoney.

MR. MAHONEY: To the extent he states that, that's a correct statement. I remind the panel, however, which I'm sure I don't need to, as Mr. Mangini confirmed, and as is on the record of this hearing, those survey materials were presented to the Department of Community Affairs on May 15th at 3:50 p.m., 1972, and were presented by the Authority. They certainly in no way constitute work prepared by the taxpayers.

MR. MORRIS: Proceed, Mr. Mahoney.

MR. MAHONEY: Thank you. May we now direct your attention to the building identified as 72/3.

MR. MORRIS: Before you proceed, now, does the B.R.A.

know when these words were placed on these forms? Are they a pertinent part of the form in terms of the signatures above it, or were these labels that were put on at a later date by the staff before submission, or what, or do you wish to make any statement about that at this point in the record? This is a question from the Chair.

MR. McCANN: In the Department's rejection of June the 9th, 1972, the Department noted that all of the survey sheets didn't have a classification, namely, they wanted each survey sheet noted either standard, substandard, or deficient. The Authority, based on the Department's request, went back and made a reanalysis of all the survey sheets...There were no changes in the surveys themselves...and has, for the Department's perusal, identified each one of the survey sheets.

MR. MORRIS: That's your comment.

MR. MAHONEY: May I ask a question through you...

MR. MORRIS: What is the question?

MR. MAHONEY: ...of the representative of the Authority?

MR. MORRIS: Well, ask the question. I'll decide whether it is reasonable for him to have to answer.

MR. MAHONEY: I would like you to ask of him, sir, or through you, whether or not each building, for 1964 and 1970,

had been classified by the Authority at the time of the submission on January 13, 1972. That is my first question.

MR. MORRIS: Repeat that.

MR. MAHONEY: My question is: Had each building which had been surveyed in 1964 and in 1970 been classified by the Authority at the time of the submission of the Building Conditions Report and the supporting documentation submitted to the Department on January 13, 1972?

MR. MORRIS: Well, that's a reasonable question. Had you determined which building was substandard as of the time of your submission on January 13, 1972?

MR. MCCANN: For the record, the building surveys were not submitted as part of the submission of January 13, 1972; they were submitted for information purposes after the public hearing which the Department wished to see the extent of the survey sheets, which our board relied upon. The Authority is charged by Chapter 121B in making a determination whether the area is a blighted, decadent, or substandard area. And they have reliance upon not only surveys but their own information, their own knowledge of the area, and any other supporting documentation they may have before them. I have no further comment.

MR. MAHONEY: The question has not been answered.

"Yes" or "No" -- the answer.

MR. MORRIS: At least he gave you what his answer was. Now, you may not consider it a responsive answer, but I'm under no compulsion to make him do more than state what he stated. You can ask additional questions, if you want to.

MR. MAHONEY: Through you, sir, I would like to ask at this time, officially, that it be noted in the record that I now ask that the Department add to its requests for information from the Authority a specific answer to that question.

MR. MORRIS: Well, the record speaks for itself. I have asked the Authority directly, in a public hearing, whether or not on January 13, 1972, they had determined that the buildings involved had been classified. So, the question speaks for itself.

MR. MAHONEY: Can I ask an addition question, Mr. Morris, through you?

MR. MORRIS: What is it, Mr. Mahoney?

MR. MAHONEY: Had, as of the date of the submission on January 13, 1972, the Authority adopted and employed the classification definitions and standards set forth in the introduction to the Building Conditions Report, pages one through 12, Exhibit 42?

MR. MORRIS: Had they adopted them?

MR. MAHONEY: Had they adopted them and used them.

MR. MORRIS: The question speaks for itself. You heard the question. It is a matter of whether you want to respond to it or not, formally. If you don't, then the Chair will so direct that this is an additional question which counsel wants to have answered.

MR. McCANN: The Department, in its request, asked us to use the criteria of the Department to simplify their analysis. The Boston Redevelopment Authority has made a determination that the area is a blighted, decadent, substandard area; that it relied upon numerous documents, some of them these survey sheets.

MR. MORRIS: Well, was that after disapproval of the Department or prior to? The disapproval came out when?

MR. MAHONEY: June 9, 1972.

MR. MORRIS: In June. Now, he's talking now January or months prior.

MR. MAHONEY: January 13, 1972.

MR. MORRIS: January 13, 1972. So, the question is directed; to appear before the Department and discuss any standards relative to the evaluation of the buildings and building types and so forth.

MR. McCANN: I cannot answer the question directly. The Authority has used probable standards for the 17 years of

its existence.

MR. MORRIS: Very good. Is that your answer? Next section.

MR. MAHONEY: I don't consider that an adequate answer, Mr. Morris, and I respectfully, again, ask that the Department consider proposing that as a formal question for additional responsive answer from the Authority.

MR. MORRIS: Your request has been noted and has
by
been transmitted/this record and by this proceeding to the members of the Redevelopment Authority and we will not engage in sending separate communications from this panel during this proceeding on every request. That's part of my rules that I have established. We will do it in this manner.

MR. MAHONEY: One final question, Mr. Morris. Would Mr. McCann kindly identify for the panel and this record, he just stated that, in making the classifications for the 1970 surveys, that the Authority relied upon other documentation. I'd like to know, if he would state for this record, specifically, what documentation did they rely upon?

MR. MORRIS: Well, it is obvious, you see, he made a general sweeping statement about the right of the Authority to make findings.

MR. MAHONEY: I am not disputing their right to make

findings.

MR. MORRIS: Observations, findings, and whatnot. We can be here all day on that point. The Chair knows what he means; you know what he means. And I submit that that was a general statement and not one of a specific document or documents. But, if Mr. McCann wishes to answer to that, I'll consider that the question can be asked at this public hearing.

MR. MCCANN: Our submission of November 28th contains numerous documentations. Chapter 121B allows the Authority to make determinations and findings. This is all I relate to.

MR. MORRIS: Do you want to proceed further with a line of questioning?

MR. MAHONEY: Not at this time. May we now proceed to building No. 72/3...

MR. MORRIS: 72/3.

MR. MAHONEY: ...shown on the Building Conditions Map -- 72/3. It's on Tremont Street. And, buildings 69B/6B and, on Stuart Street, 69A/6A. Perhaps, Mr. Kanin, you can identify those on the map. I apologize for the reference, but as you will see, that's the way the survey sheet itself was filled out by the Authority.

Once again, we have an instance this time in which there are three buildings that have been lumped together by the

Authority and one survey form has been filled out in 1970 for three buildings. This makes three substandard buildings that the Authority managed to add to their list in parcels A, B, and C, on the basis of one survey form. Let us look at that form.

The first page of the form, as you can see, has 39 items rated one and one item rated two. No item was rated three or four. On the second page, almost all items are rated one or two, although the basement floor, doors, and stairs were found to be evidence of deterioration ranging from 26 to 50 percent. The fire escape was given a rating of three, although, as you know, no provision for that in the Authority's standards is made.

The comments indicate that the surveyor was unable to enter the top floors; that the interior decor of the lounges that he did enter were in good condition, in common with the business conducted there; that the street-floor restaurant, called THE SIZZLE BOARD, was "very new and has themodern and up-to-date decor and equipment."

The gentleman who surveyed these three buildings was the same gentleman who surveyed 16 buildings in three days, and undoubtedly was unable to examine the top few floors, giving him a head start on the other teams of examiners.

The Building Survey Form for 1970 is now classified as substandard. On the basis of the Authority's standards and

Department's standards, and in view of the fact that this building has clearly undergone major renovation, as anyone familiar with that restaurant can testify, we suggest to the Department that these three buildings cannot be included among those classified as substandard warranting clearance.

MR. MORRIS: Mr. Mahoney, who, in your opinion, since you are analyzing this form, determined that this was substandard; was it Mr. X, who it says, building surveyed by...I can't read his name...or was it someone who countersigned or was it Mr. Vincent or was it another person who wrote 'substandard' at the bottom of the form? Did you research it to that point?

MR. MAHONEY: Yes. I was going to bring in a handwriting expert for your benefit to answer that question, Mr. Examiner.

MR. MORRIS: I am just asking.

MR. MAHONEY: I seriously tried to consider that question myself; however, I will say to you, for whatever it's worth, it was so evident to me in looking at both the style of the handwriting and at the exhibit submitted to the Department on May 15, 1972, and now at Exhibit 42, which is the Building Conditions Report, that the difference is so obvious that, even to my lay eyes, in this connection, that clearly someone other than the person who signed those sheets put on that classification.

MR. MORRIS: Well, at this point in the proceeding, since you have entered five or six different items and they are all in evidence -- there is no contesting that -- you are now alleging that these forms that have been made out vary, that they have insufficient information on their own classification system to label them substandard and, you are further, now, alleging that even the listing on the form as substandard appears to have been done by others than the parties who made out the original forms. Now, this is not a formal court of law. You have produced no experts.

MR. MAHONEY: I will, if you wish me to, Mr. Morris.

MR. MORRIS: It's your case. You are making these allegations about these forms being doctored, altered, and additions being made to them and the like. Now, I have asked the Authority several times to respond to these allegations, and I want to ask one last time. Now, here's a specific case. Was this 'substandard' put on these forms after the fact or by the parties who were part to this inspection and have countersigned it and who acted as project engineer? You either know the answer, "Yes," or, "No," or, if you can't speak responsibly to the question, I'd like to know from the Authority, since there are strong allegations being made here relative to these forms which are supporting documentation for the finding that the area

and certain buildings are, in fact, substandard.

First, can you tell me when this substandard was put on these forms?

MR. MCCANN: No, I can't tell you the exact time. I can tell you, as Mr. Mahoney has related previously, that the engineers, the architects, who went out to survey the buildings are not the ones who make the final determination. Theirs is a technical engineering task of analyzing the buildings from an engineering standpoint. This is the reason for a checksheet; this is the reason for certain items that they are to consider.

The Authority Board is the one responsible in the final analysis for determining blight or decadence within an area; that who made the actual determinations, who reviewed either for the Board or along with the Board for each building or for the general area, I could not say. It was not done by the engineers who did the actual survey.

MR. MORRIS: That is a fact.

MR. MCCANN: That is a fact. This is always the case in any survey the Authority makes.

MR. MAHONEY: Good.

MR. MORRIS: Well, the record speaks for itself.

At least the gentleman has made his comments of his personal knowledge in a representative capacity that the notations on the

bottom of these forms stating 'substandard' do not necessarily imply that the engineer listed above in those cases made that finding themselves.

MR. McCANN: Also, I object, Mr. Chairman, to Mr. Mahoney constantly saying these documents were doctored or tampered with or are fraudulent representations to the Commission. At no time...

MR. MORRIS: I was wondering how long it was going to take you to refute these charges.

MR. MAHONEY: Would he like to take the witness chair?

MR. MORRIS: No; we are not going to have an adversary proceeding. I am willing to accept these questions within reason and good spirit to see if we can get to the guts of this issue here.

Now, you represented that the report on Sarni's building, The Sizzle Board, Bachelors 3, 16 Carver Street, that these in fact have been signed -- and the gas station -- have been signed and listed by the engineers and project engineers and other persons on there as being substandard, when in fact their own coding shows that they would not normally be considered substandard.

MR. MAHONEY: Not normally, they would not by the

actual coding.

MR. MORRIS: Not by the coding they represent on the sheets. Now, you have made this point and I have asked the Authority to answer what this discrepancy is. Good night, I'm not trying to get into a guessing game. We want to get at the facts. The public has a right to know before this judgment is made by this Department on these findings, whether we concur in those findings or whether we can make independent findings. And this is a very serious business here and that's why I would like more than merely an offhand comment about this particular phase of the testimony, if that's possible. If not, we will have to rely on our own judgment as to what other inquiries we will address formally to the Authority.

MR. MCCANN: The only change Mr. Mahoney can point to is the classifications of some buildings have changed over time, since the first survey in 1964. We say, of course, of course they're changed. They changed in 1970; some changed in 1972.

MR. MAHONEY: How many?

MR. JOHN H. HENN: Let him finish.

MR. MCCANN: We have resurveyed buildings and we have reanalyzed the earlier surveys.

MR. MAHONEY: Excuse me. May we, for the record,

have the speaker who is counsel for the developer identify his name as speaking?

MR. MORRIS: Mr. McCann.

MR. MAHONEY: No; the counsel who is coaching him, for the developer, sitting next to him. May we have his name and have him identified for the record, please?

MR. McCANN: He is not coaching.

MR. MORRIS: Gentlemen; just a minute, gentlemen. We are not going to have any flareup at this point. I recognize that Mr. McCann is speaking. I know who he is. I am not consciously aware of any counsel who has spoken as counsel at this point. If there are such and he wishes to be identified, he can be so identified. In a public legislative hearing, people have a right to murmur, talk, and whisper within reason, counsel. Now, if you have some specific objection on repeating something he has said...

MR. MAHONEY: Yes. I ask there be noted the comment of the counsel for the redeveloper, who is seated right next to Mr. McCann.

MR. MORRIS: Name him.

MR. MAHONEY: I do not know the gentleman's full name.

MR. MORRIS: What did he say?

MR. MAHONEY: I cannot tell you what he said. He

spoke out and said, "Let him finish." Those are the words he made in the public record.

MR. MORRIS: I will only allow the record to state, unless you can identify the gentleman in his capacity, that he's present, that he said something in a public record; otherwise, strike it.

MR. MAHONEY: His name is Mr. Henn and he is from the firm of Foley, Hoag & Eliot, and represents the developer in this case; and I think the record should show, if he wishes to counsel the Authority's spokesman, as to what he will testify about their own records. I think the record should show that.

MR. MORRIS: You have already gotten on the record what you wanted to get on.

MR. MAHONEY: Thank you.

MR. MORRIS: I have no objection, unless the party named, whom I don't happen to be able to identify, wants to object to it. If he wants to object to being on the record as noted or indicated, it can be stricken. Go ahead, Mr. McCann. Are you through, or did you lose your trend of thought?

MR. McCANN: I believe that, despite the interruptions, I was about to say we have resurveyed buildings and we have reanalyzed those earlier surveys. This last summer, at the Department's request, we not only surveyed certain buildings but

we reanalyzed every building surveyed, taking into account the Department's approach and their comments. As a result of this, and the Department's request to clarify and classify each building on a coversheet, some buildings have been classified differently than previously.

MR. MORRIS: All right.

MR. MAHONEY: How many buildings, Mr. Morris, does the gentleman now say the Authority resurveyed? This is very material, Mr. Morris.

MR. MORRIS: The question is whether he can be responsive to that question.

MR. MAHONEY: If he can't answer it, can he obtain that material for us?

MR. MORRIS: Just a minute. You are going too fast for me. Restate Mr. Mahoney's question.

(Question read.)

MR. MORRIS: That is a reasonable question. I think it has been part of the testimony anyway.

MR. MCCANN: Mr. Morris, I will requote. We not only resurveyed certain buildings but we reanalyzed every building surveyed, taking into account the Department's approach and their comments.

MR. MORRIS: The question was, How many? Do you

know or not?

MR. MCCANN: I believe it's part of the record already.

MR. MORRIS: Well, that's his answer. Go ahead, Mr. Mahoney.

MR. MAHONEY: You know, Mr. Morris, I'd like to state for the record at this point, on behalf of the people whom I represent here, that while this may seem that this is merely some tactical lawyer's argument, that we are, indeed, dealing with the heart of the determination to be made here. It is this basic issue as to whether someone's property may be taken away from them or not, and I think that the Authority's obligation to supply this Department and the people of this Commonwealth with a rational, responsible, and honest answer is something which should be forever in their minds, and their failure to do so is a disservice to the people of this city and to this Department.

MR. MORRIS: Well, Mr. Mahoney, on the question, at some point, there have been inferences there were seven buildings. You, at some point in your testimony, stated that there were eight buildings.

MR. MAHONEY: No, I never said there were eight buildings resurveyed, Mr. Morris. I said there were eight buildings reclassified and that there were seven buildings resurveyed.

MR. MORRIS: I will accept your statement. But, there were some figures that you mentioned in terms of being reclassified and/or resurveyed. Is that a fact?

MR. MAHONEY: Yes, sir.

MR. MORRIS: That is your testimony.

MR. MAHONEY: Yes, sir.

MR. MORRIS: Do you wish to go back and get your testimony?

MR. MAHONEY: I don't think it's necessary.

MR. MORRIS: Can you restate it? And I will consider that a reasonable question to advance to the Authority. We don't have to play games here, and either the gentleman can answer it or he can't answer it or he can find out whether they resurveyed seven buildings.

MR. MAHONEY: Mr. Morris, respectfully, at this time, if I may, I think the letter which I handed you, that was marked as an exhibit this morning, that asked those two simple, very direct, and quite revealing questions, if honestly answered, will solve this riddle. Quite clearly.

MR. MORRIS: Let's look and see if it does. This is January 24th. This is a letter that was read in this morning as an exhibit. And two questions were asked. I believe you are referring to the second question here; is that right, Mr. Mahoney?

MR. MAHONEY: Yes. Actually, the answers to both questions.

MR. MORRIS: You have asked they list the 15 buildings which the Authority stated were substandard in parcels A, B, and C, as of the date of the last hearing, giving parcel number, block number, name and address of owner. I don't consider that an unreasonable question. The Department asks that you find that information out and so answer for these proceedings.

Two is: List the eight additional buildings which the Authority stated was substandard in parcels A, B, and C, as of the date of its resubmission on November the 28th, giving the parcel number, block number, name and address of owner. I likewise consider that a reasonable question.

Mr. McCann, can we expect an answer to that either from you or from someone officially from the Authority before these proceedings are recessed? And I remind you we are going to try to recess tonight for good, I hope. Is it possible to get an answer to these two questions? There is a telephone here.

MR. MAHONEY: Perhaps we should take a recess, Mr. Morris. I will be glad to step down for a moment.

MR. MORRIS: Not unless this is critical to your argument right now.

MR. McCANN: I answered this morning, Mr. Chairman,

on the record, the survey sheets so indicated and Mr. Charles Mahoney could analyze that for himself. However, we will get a direct response to the Department, if they so request one.

MR. MAHONEY: May we have this clear on the record. Is the Department not now asking this? Excuse me. For the record, Mr. Morris, I had understood that these requests had now been accepted by the Department and had become the requests of the Department.

MR. MORRIS: The Hearing Officer asked these questions be answered. I'm not going to dig in the record and look through it. Regardless of what you say to Mr. Mahoney, I would like the answer from the Authority on these two questions.

MR. McCANN: We would get a response.

MR. MORRIS: We suggested this morning we might save time if you made the calls to get this material figured out. It's very simple--15 buildings that you stated were substandard and the additional eight which you stated were substandard as of the date you resubmitted in November. Now, if you wish to, you can peruse the papers during the break or at any time and call back and get the answers to those two questions. I don't think it's that difficult.

We will have a recess of five minutes while the stenographer rests his hands.

(Recess.)

MR. MORRIS: Ladies and gentlemen, the hearing will resume.

Now, I am informed by counsel that it may be possible for him to finish up his proceedings, if we continue on, and I'm also informed that this room may be available and, in the public interest, we intend to, as of now, try to close out this matter at this session. Now, that does not mean that this is the schedule; it merely gives those of you who have families and want to get home to dinner and whatnot an idea. We may go straight through with only breaks in an effort to get through with this hearing once and for all.

MR. MAHONEY: Mr. Morris, may I, for the record, have clear that it was my understanding, however, if not today, at some other time before the hearings are closed, there would be an opportunity for the materials to be supplied by the Authority in response to the various questions that have been asked to be submitted and an opportunity for questions to be asked pertaining to those answers.

I think what we are saying, I believe, is, we can complete our main testimony, but then have left outstanding all the other requested matters and any cross-examination requests we may wish to make at that time. That is a separate matter, I

realize.

MR. MORRIS: Well, the fact is I will, in my discretion, determine whether the hearing is closed. I don't know what the B.R.A. may come in with this afternoon, but we certainly want to hear from them, and then there's a 10-day period during which certain other written material may be furnished by those who were not able to appear here.

All I am saying is we are going to give you a full opportunity to present your position before we at least close out this portion of the so-called Park Plaza hearing. Proceed, Mr. Mahoney.

MR. MAHONEY: You will recall that, before we digressed briefly for some statements and questions that were incorporated in the record, I had been talking about three specific buildings and they were, just so it's clear, the buildings I am referring to, buildings identified on the Building Conditions Map submitted on November 28, 1972, as 72/3, 69B/6B, and 69A/6A. And without me going through that testimony again, you gentlemen, I am sure, will recall it.

I would like to simply conclude with reference to those buildings that, again, we have one 1970 survey to condemn three buildings and that the evidence is so comingled and mixed as to each of the three that we submit to you that that is not

an appropriate method or grounds of that alone, without regards to the substance to have those condemned. That would bring the total to 12 of the 23 buildings that we have now covered; 12 of the 23 which, either because of how they were done, in the instance of two combined on one survey and three combined on one survey, two such instances, and the others on their face.

We say that their own survey forms indicate that these 12 cannot be included among the 23 which the Authority alleges are substandard and warranting clearance. As a result, only 11, at the most, and we believe some of these have also been unfairly classified both for methodology and, as well, for the standards actually made and applied. Of the 69 buildings now in parcels A, B, and C, considerably less than 20 percent can possibly be considered substandard warranting clearance by the Department.

I submit to the Department that this area, if it could be determined to be decadent, and I believe we have shown it cannot, would certainly then not be eligible for clearance and redevelopment as opposed to rehabilitation treatment. Other factors indicating that parcels A, B, and C are not decadent:

The tax revenues of parcels A, B, and C, which have already been introduced into evidence and marked as an exhibit, despite the blighting influences of the B.R.A. these last

eight years, continue to increase hardly evidence of decline and decadence. In 1971, the total tax revenues for parcels A, B, and C, were \$1,660,070.28; in 1972, they had risen to \$1,824,562.98, a rise of \$164,492.70.

It is interesting to note that this absence of decadence was evident in all parts of the project area, parcels A, B, and C. All three areas generated higher tax revenues in 1972 than in 1971.

The Authority has failed to show the Department, as one would expect them to do, in making the case that any area is decadent and warranting clearance and total redevelopment, any evidence of the inability of the buildings in the area to obtain an insurance, for example, any evidence of the lack of marketability of area establishments; and, finally, any showing that these buildings have been marked for condemnation by the Building Department of the City of Boston.

In the summary of the decadence presentation, we have looked at the methodology used by the Authority in its three surveys of 1964, 1970, and 1972. We have found, not based on any reasonable standard by which the Department may make a determination, that the area is decadent, much less the determination that the area is eligible for total clearance. And, in addition, we have used the Authority's own evidence to make the

case against it, to make the case that only by the juggling of figures and only by after-the-fact patchwork has the Authority been able to invent the figures that appear to justify clearance of this area. And we have seen by reading between the lines and by looking at their own survey forms, that even with all the tricks of their trade, the Authority has been unable to establish even the most elemental justification for the confiscation of private property and demolition of structurally sound buildings in the Park Square area. No amount of paper manipulation can change the fact parcels A, B, and C are not decadent.

Without the finding that the area is decadent, there is, of course, no public purpose and no justification in law for the Park Plaza Urban Renewal Plan. The June 9, 1972, decision was correct. There is no evidence whatsoever to show any change since that date. The Department, we believe, has a solemn obligation to the taxpayers, the owners, the workers, and the residents, without regard to political pressures or public demonstrations, to render a decision based upon the facts with respect to this fundamental and, indeed, solemn determination.

MR. MORRIS: Does that conclude your portion...

MR. MAHONEY: On decadence; yes, sir.

MR. MORRIS: On decadence. Before you proceed into the next area, I would like it known that Commissioner Mahoney

-- that's Miles Mahoney -- is meeting with some legislators and in some committee work and would be here, normally, to hear this important testimony were it not for that, and intends to be here as soon as possible during the proceedings. He has been told by courier we are proceeding on. I would just like to get that on the record. And to that extent, I would like you to know he expects to be back here. And we also hope Mr. Kenney may make an appearance, as we pointed out before, sometime before the proceedings are through. All right, Mr. Mahoney.

MR. MAHONEY: The next applicable standard is: The Urban Renewal Plan is not Sufficiently Complete as Required by Section 48.

Section 1 of Chapter 121B defines what an urban renewal plan is, and I respectfully call your attention to that statutory section. Further, it must conform to the general plan for the municipality as a whole. The plan presently before you fails to meet these statutory requirements. It does not contain a plan for D and E. The boundaries of the plan are, therefore, on its face, uncertain. Parcels D and E may or may not be the subject of the plan and it may or may not fall within the terms of the cooperation agreement. Please see Urban Renewal Plan, Section D(2) and the Zuckerman letter to Kenney, September 12, 1972, re parcel D and the Cooperation Agreement and the Letter

of Intent, November 28, 1972, all incorporated into the record of this hearing.

The plan as submitted is unchanged from that which was previously submitted. It did not then and does not now indicate land acquisition, demolition, removal and rehabilitation of structures within parcels 4 and 5, sometimes called D and E. It does not provide for specific urban renewal treatment.

As the Department stated on June 9, 1972, in its disapproval of the plan, the Authority itself, under the terms of this plan now before you, may vary the boundaries by its failure to act and may unilaterally change the area boundary. It is clear that the Legislature intended to prohibit approval of a plan which included areas within it that were judged to be decadent, but for which there was no plan of renewal. Thus, Section 1 seeks to foreclose that which is attempted here by the Authority, the tying together of the Combat Zone with the Park Square area in the hope that the evidence pertaining to blight or decadence of the Combat Zone will suffice to permit the taking of parcels A, B, and C. If this objective, which the Authority seeks to accomplish, is sanctioned and permitted by the Department, then, on the face of the plan and of the Cooperation Agreement, it is clear that the Authority may, at its discretion, drop parcels D' and E from the plan and thus permit nondecadent property to have

been acquired and turned over to private persons for their gain and profit. This scheme, which permeates the entire plan, is, we submit, fundamentally illegal and unconstitutional. It cannot lawfully be permitted by this Department through approval of the plan.

I have previously discussed in Section 3 of this presentation that the urban renewal plan does not conform to a comprehensive plan for the locality as a whole. The testimony of Representative Frank underscores this point. The testimony of scores of neighborhood groups surrounding the project area also supported this contention. 'It is clear from this record that there is no valid workable plan existing in the light of Mr. Kenney's own testimony that the plan was predicated upon federal funds and programs no longer available or applicable. Hence, there is no complete plan and, as such, approval of the Department may not lawfully be given.

Finally, as I will discuss more fully in Section 9, on the Relocation Plan, this plan is incomplete in that there is no relocation plan for D and E, sometimes called 4 and 5. It is not accompanied by material indicating the proposed method for relocation of the persons and organizations to be displaced by the project and the availability and means by which there will be provided dwelling units for such persons substantially equal

to the number of dwelling units to be rendered temporarily or permanently uninhabitable as a result of the carrying out of this project.

As was pointed out in the section on completeness of the plan, concerning the failure of the plan to conform to a comprehensive plan for the locality as a whole, the failure of the Authority to include this relocation information is an impediment to other required findings to be made by the Department under Section 48 of Chapter 121B.

It must be recognized that what the Legislature has provided in Section 48 is a clear requirement on the part of the local Authority to submit a comprehensive and detailed plan adequately supported by documentation that would permit each of the statutory findings to be made simultaneously. These statutory findings are, in fact, deeply interrelated. For example, without knowing the details of the relocation plan, one cannot, on this record, make a finding that the plan conforms to the comprehensive plan for the locality as a whole; that it is financially sound; that it is consistent with the soundness of the locality as a whole; or, indeed, that it is complete. The failure of the Authority to meet its burden of proof derives not only from their demonstrated incompetence but from the circumstance that the plan proposed is inherently illegal, and from

their reported assumption that the Department has acquiesced to this scheme and will permit the plan to be approved now, even though, on its face, the plan is not complete.

The next section deals with the relocation plan. We submit that that plan has not been and cannot be approved under Chapter 79A. The Authority submitted to you for approval on November 28, 1972, a so-called Agency Qualification Request and Relocation Plan which, in accordance with Chapter 121B, Section 48, must meet the approval of the Bureau of Relocation and must be in compliance with the requirements of General Laws, Chapter 79A, and the applicable rules and regulations adopted by the Bureau. The Agency Qualification Request and Relocation Plan, which we would like now to have marked as an exhibit for identification for the purposes of this hearing, contains material which is intended to supplement the relocation section of the supporting documentation to the plan at pages 34 through 48. I would like to formally request now that, for purposes of clarity, that this be marked for identification.

MR. MORRIS: Well, I call counsel's attention to the fact that we already have in as Exhibit 6, Boston Redevelopment Authority Agency Qualification Request and Relocation Plan. I presume these are the same documents.

MR. MAHONEY: Yes, sir; they are identical.

MR. MORRIS: I find no further need of further identifying it. Refer to the item in Exhibit 6 and we will know what you are talking about.

MR. MAHONEY: Thank you, Mr. Morris. I would also like, at this time, Mr. Morris, to ask that there be identified as an exhibit the rules and regulations of the Bureau of Relocation of the Department published on December 30, 1971, pursuant to the provisions of General Laws, Chapter 233, Section 75, and, more specifically, Section 11 of the rules and regulations entitled REGULATIONS - BUREAU OF RELOCATION.

MR. MORRIS: Well, I will take a brief recess to talk to my panel, because this pertains to our Department. Off the record.

(Discussion off the record.)

MR. MORRIS: Now, counsel has requested that we identify as an exhibit for the record REGULATIONS - BUREAU OF RELOCATION, DEPARTMENT OF COMMUNITY AFFAIRS, COMMONWEALTH OF MASSACHUSETTS, 1971. That is this document. And I herewith will enter it in on the motion of counsel. It will be labeled as Exhibit No. 49.

(EXHIBIT NO. 49.)

I ask counsel for what purpose he wishes this to be identified in connection with Park Plaza.

MR. MAHONEY: Because, Mr. Examiner, as I will show, it is our contention that those regulations are applicable to this Park Plaza Urban Renewal Plan and Project and, as I intend further to show, that the plan and project, as submitted, does not conform to those rules and regulations.

MR. MORRIS: First, can we save some time to this extent: That you say you intend to show and prove that they apply, can we take note of the rule that they do apply and save you all that discourse?

MR. MAHONEY: Yes, anything you can do.

MR. MORRIS: In the absence of argument from other counsel...

MR. MAHONEY: I expressly call to your attention, before you say that, Mr. Morris, that the actual official submission to you on the letter of intent dated November 28, 1972, expressly states you were put on notice that the redeveloper and the Authority advise you -- I'll give you the page and citation -- that these do not apply.

MR. MORRIS: Well, they have a right to their opinion.

MR. McCANN: That they do apply.

MR. MORRIS: I am putting into evidence the regulations and we are ruling that these regs do apply to Park Plaza.

MR. MAHONEY: May I refer you down to Section 4201.3

of those rules and regulations. 4201.3. And I will read it, if I may, just one sentence from it.

MR. MORRIS: Go ahead.

MR. MAHONEY: They provide that the redevelopment agency shall have "notified all site occupants and community groups 15 days prior to the expected date of the Relocation Plan submission, that copies of the Relocation Plan are available for public inspection at a site convenient for those proposed to be displaced. Upon notification, site occupants and community groups shall be given 30 days in which to review and make recommendations for changes in the Relocation Plan."

I wish now to state for the record, as I stated for the record at the prior hearing in April of 1972, that I represent, in accordance with my appearance, some site occupants who have not received any notification of the resubmission of the Relocation Plan, even as of this date at which I appear before you. Accordingly, I respectfully request a ruling by the Hearing Examiner that, as a result of the failure of the Redevelopment Authority to comply with the applicable rules and regulations, the plan, as submitted -- the Relocation Plan, now, I am referring to, as submitted -- has failed to comply with these rules and regulations.

MR. MORRIS: I can't make a ruling like that, counsel.

I can make a ruling that the regulation speaks for itself. It says they shall notify all the site occupants within this period of time, but I can't rule out the entire plan.

MR. MAHONEY: I said the Relocation Plan only.

MR. MORRIS: I mean the entire Relocation Plan, which I don't have and haven't had you analyze yet. I don't know what is in that. I think you should be more specific before you ask me to make a broad ruling.

MR. MAHONEY: What I am saying, Mr. Morris, so that it's very clear, is that the Relocation Plan, as your Exhibit 6 will show, was submitted to the Department by a letter of transmittal dated November 28, 1972; that the site occupants whom I represent from the Park Square Improvement Association have not received 15 days prior to November 28th any notification as required by Section 4201.3.

MR. MORRIS: All right. Before you go further, let me ask a simple question of the representatives of the Authority proposing this. Has any such notice been sent to the occupants? As far as you know.

MR. McCANN: A notice was sent to the occupants on 4/28/1972, which fully complied with the Department of Community Affairs' regulations.

MR. MORRIS: All right. Now, he has made his

statement. You state you represent certain people who didn't receive the notice.

MR. MAHONEY: No, no, Mr. Morris. As I understood his answer, he said that...Could we have it read back, please... 4...

MR. MORRIS: 28.

MR. MAHONEY: ...4/28/1972 notice was sent. Now, may I call your attention, please, to Section 4201.3 and ask you to look at it.

MR. MORRIS: Off the record.

(Discussion off the record.)

MR. MORRIS: Back on the record. So that the record is clear, we have accepted into evidence the rules and regulations of the Bureau of Relocation, Department of Community Affairs, and I have ruled, as the Hearing Officer, that they do apply to Park Plaza.

Now, counsel for the opponents has raised the question of notice which is required in these rules and regulations to all of the site occupants and has stated that, in his personal knowlege, as counsel, certain people have not received this due notice.

MR. MAHONEY: May I state something further, specifically, so you have this point very clear, Mr. Examiner. I

want to clarify one portion of what I stated.

MR. MORRIS: What I stated or what you stated. I am making a statement. Now, the Authority has stated that it sent a notice on 4/28/'72 regarding the Relocation Plan to all the site occupants. Now, that was their statement. Now, there was a submission on 11/28/'72 in Exhibit 6 of what they purport to be their Relocation Plan. Now counsel is attacking that. I'm offering counsel now the right to make his attack, but I'm reserving my right to make any ruling regarding the lack of validity of their plan until I hear your arguments, which I haven't heard yet.

MR. MAHONEY: Very well. May I ask you take note, members of the panel, of the following facts which are in your own records: First, that an urban renewal plan, together with a Relocation Plan, was submitted by letter of transmittal to your Department on January 13, 1972, for the Park Plaza Project. No doubt about that. I think those are both incorporated in the record.

Secondly, you will note that you conducted hearings on the Park Plaza Urban Renewal Plan on April 11th through 13th, 1972. Interestingly, you may recall, at that hearing we raised this identical objection at that hearing, claiming that no notice had been given, and the Authority insisted that notice had been

given. Now we hear for the first time that, yes, they allegedly gave some notice, though I represent to you that none of the people I represent have ever received such notice; that on April 28th, they say, 1972, they submitted -- they gave -- such notice.

Now, may I respectfully point out that on June 9, 1972, the Department rendered a decision disapproving the plan and then, next, for the record, we have a letter of transmittal contained in Exhibit 6, dated November 28, 1972, together with a new urban renewal plan and a new relocation plan and certain other additional supporting documentation which I won't enumerate for these purposes. I further represent to you that no one of the people whom I represent in the Park Square Improvement Association received, 15 days prior to November 28, 1972, any notice of a relocation plan.

MR. MORRIS: And you say you represent over 100 people?

MR. MAHONEY: In the Park Square area, I represent some 73 people--merchants, tenants, owners.

MR. MORRIS: You state none of these people have received any notice about any relocation plan from the Boston Redevelopment Authority?

MR. MAHONEY: Not in compliance with these regulations; that is correct, sir, we have received no notice 15 days

or before this submission of November 28, 1972.

MR. MORRIS: You said they received no notice.

MR. MAHONEY: Yes, sir; that is correct.

MR. MORRIS: We will take up the dates and postmarks of these notices later. Now, gentlemen, in the rear, of the Redevelopment Authority, you made one statement that notices had been sent. Now, you heard the very clear and direct challenge to this statement that notices had been sent regarding the Relocation Plan. Do you want to comment on this now or do you want us to formally address the question to the Authority?

MR. McCANN: I believe the material is all in the agency's request for submittal where it stays and which has copies of the letters sent registered mail and copies of the advertisements in the newspapers.

MR. MORRIS: Well, I'm not Solomon. Someone is not telling the truth here, or the mailman dropped some of this material down the slot or some must have been returned for address unknown, or some of your clients will have to come in here...

MR. MAHONEY: I will be glad to bring them. There is one right there.

MR. MORRIS: ...and make statements that they haven't received any such notices. But, for the record, in the exhibit, it appears, from the Boston Redevelopment Authority, Dear Business

Owner salutation, Exhibit 1B, I think it was, over the signature of Robert T. Kenney, it does definitely discuss a Relocation Plan affecting the area and, admittedly, it's a letter and it states...

MR. MAHONEY: What is the date on it, Mr. Morris?

MR. MORRIS: There doesn't appear to be a date on this. I will answer other questions. I just want you to know there is such a letter in Exhibit 6, and I presume that that's what you are referring to, which has been sent out by your public agency; is that right?

MR. McCANN: Yes, it has.

MR. MORRIS: So, you are testifying as to the best of your knowledge and belief as a representative of the Authority that notices were sent to the listed people in this area.

MR. McCANN: Yes, notices were sent in compliance with the regulations.

MR. MORRIS: He makes a direct statement. Now, I will give you two minutes or a few minutes to challenge it, and let's get on with it, because this becomes almost an adversary matter.

MR. MAHONEY: I realize that.

MR. MORRIS: It's very serious.

MR. MAHONEY: It's very serious, Mr. Morris. I am trying to simplify this. Does the gentleman from the Authority

represent the notice was allegedly sent, that he is specifically referring to, now, this letter, he's saying, on April 28, 1972?

MR. MORRIS: I am looking at your Exhibit 6 submitted November 28th, and there is this letter in the book, Exhibit 1B, which goes to the business owners and refers to a Relocation Plan affecting the occupants, et cetera, et cetera. Are we talking about the same letter?

MR. McCANN: There's a series of letters, one going to families, others going to businessmen, others going to the residents.

MR. MORRIS: All right; I'll allow you to expand on your definition of what you say you sent. You will take notice of this; won't you, counsel. In Exhibit 6, he's referring to Exhibit 1A to the residents; 1B, Dear Business Owners; and then, another Dear Resident letter, Exhibit 2A. And all appear to be signed by Robert Kenney.

MR. MAHONEY: Does the gentleman say 2A has also been sent?

MR. MORRIS: We can ask him. What do you say to that, Mr. McCann?

MR. McCANN: I can only refer you to the agency's submission. There's a letter in there from Robert T. Kenney to Miss Judy Hart, dated May 16, 1972, which explains the procedure.

MR. MAHONEY: Mr. Hearing Examiner, if you will only look at Exhibit 2A, we'll see that the Authority is telling you that they have sent out a letter saying the plan has been approved. I didn't know the hearing had been held yet. What we've got here are some mechanical things from their mimeograph machine.

MR. MORRIS: Let's not get into that.

MR. MAHONEY: Look at the letter, at Exhibit 2A.

MR. MORRIS: Mr. Mahoney, I don't want to get into the examination line by line. I want to answer your basic question as to notice under our regulations, as you started off with. I'll allow you to expand on this later, if it's essential to the case; but, right now, you made an allegation that none of the said occupants have been served notice in accordance with the regulations which are Exhibit No. 6.

MR. MAHONEY: Yes, sir.

MR. MORRIS: Now, the Authority refutes that. They say they have.

MR. MAHONEY: What date, Mr. Morris, do they say they sent those letters?

MR. MORRIS: All right; you are asking a specific question. Do you know approximately what date these letters went out?

MR. McCANN: I can only quote from the letter to the

Department, to the Bureau of Relocation, Department of Community Affairs, from Robert T. Kenney, dated May 16th.

MR. MORRIS: Is that in evidence and in this book, too?

MR. McCANN: That's part...

MR. MORRIS: Page number?

MR. McCANN: It's after the second yellow sheet.

MR. MORRIS: The May 16th letter.

MR. McCANN: The second paragraph. All site occupants who will be displaced were notified by registered letter dated April 28, 1972, of the availability of the Relocation Plan.

MR. MORRIS: That is what Mr. Kenney has said in this exhibit. Now, later, if you want to challenge that -- we hope he comes, but, if he doesn't, you can go on record and we will ask him if that date is correct.

MR. MAHONEY: Mr. Morris, I dispute the factual accuracy of the representation made to you by the Authority. But, notwithstanding that in order not to impose unduly, I would be glad to bring in scores of people from the area who will so testify. There are two right here in the room, if I may have them rise and identify themselves and give their address. I would like to do that in the record.

MR. MORRIS: Two is not a substantial number. But,

if you want to take the time.

MR. MAHONEY: I won't do it, if you think it's not worth it.

MR. MORRIS: I will take notice there are two people in the room who would say, according to you, that they did not receive notice.

MR. MAHONEY: Would you gentlemen just rise and state your name and business address, please?

MR. RICHARD WINSHMAN: Richard Winshman, Park Square Lounge, 9 Providence Street. I have never received any notice of relocation from the B.R.A.

MR. DONALD GROW: My name is Donald Grow; I own the English Tutor Restaurant and Lounge, Park Square, 4 Columbus Avenue. And I, too, have never received any relocation plan or idea of a relocation plan.

MR. MORRIS: Question to both of you. Are both of those businesses listed in your names?

FROM THE AUDIENCE: Yes, sir.

MR. MORRIS: Are you the only one who might be likely to receive mail of this nature?

MR. GROW: Yes, sir.

MR. MAHONEY: Mr. Morris, I am willing to rest on the record on this issue right now. Their statement on the

record is that they sent out those notices on 4/28/'72. I think we need to say no more.

MR. MORRIS: It says dated April 28, 1972.

MR. MAHONEY: All right.

MR. MORRIS: You will accept the date?

MR. MAHONEY: I deny it substantively, but we will accept it for the purposes for which I raise this issue, namely, that's clearly not five days prior to the filing of the new Relocation Plan or, indeed, it's after it. We have two circumstances, two filings of two relocation plans, one January 13, 1972; notice, the Authority says, given April 28, 1972. Two, November 28, 1972; notice given, they would have you believe, on April 28, 1972. In both cases they have plainly violated 4201.3.

MR. MORRIS: That is your allegation.

MR. MAHONEY: Yes, sir.

MR. MORRIS: We will take it under advisement for whatever value it may have to the Commissioner in reviewing the facts of the case.

MR. MAHONEY: Thank you.

MR. MORRIS: However, they have their statement they made and you have your allegation.

MR. MAHONEY: Shall I proceed?

MR. MORRIS: Yes.

MR. MAHONEY: May I just ask one final question on that point. Would you wish us to bring in additional witnesses for you on this point? I'd be happy to do it.

MR. MORRIS: Give me a minute.

(Department conference off the record.)

MR. MORRIS: With regards to your last question, I don't think it is necessary for you to bring that parade of witnesses on this point of notice, but I am going to ask the Redevelopment Authority if this was sent out as certified or registered mail or as ordinary mail.

MR. McCANN: It was sent out as registered mail.

MR. MORRIS: To all?

MR. McCANN: Yes.

MR. MORRIS: Therefore, you would have some type of receipts in a log over there at least of those parties.

MR. MAHONEY: Could we ask them to bring them in?

MR. McCANN: We also advertised to comply with the...

MR. MAHONEY: We are asking about this one.

MR. MORRIS: Wait a minute. All three can't talk at the same time. What is it you want?

MR. MAHONEY: I would like them to bring in those registered receipts.

MR. MORRIS: Well, it is a reasonable question. Mr. McCann.

MR. McCANN: We will be glad to furnish the receipts.

MR. MORRIS: All right; that solves that. At least it will solve it to the extent of having something here.

MR. MAHONEY: May we have one other point made clear on the record?

MR. MORRIS: Go ahead.

MR. MAHONEY: I think we should clarify whether the present Relocation Plan submitted on November 28, 1972, is contended by the Authority to be the same relocation plan submitted on January 13, 1972.

MR. MORRIS: What is the relevance of that?

MR. MAHONEY: I think it is to the question of which the notice was intended to pertain to. Let's not get hung up on that point.

MR. MORRIS: Mr. McCann, what do you say to that?

MR. MC CANN: I would have to have the question read.

MR. MORRIS: What he wants to know is when you sent in Exhibit 6, you had a Relocation Plan; is this the same relocation plan that you had when you sent the notices out back in 4/28 or was it a different relocation plan?

MR. McCANN: Yes, it is.

MR. MORRIS: It is the same. He alleges it was the same Relocation Plan.

MR. McCANN: That applied to the notice.

MR. MAHONEY: Okay. May we now, then, have marked, so that there can be no doubt as to the two plans we are referring to, Mr. Morris...

MR. MORRIS: What is the other one?

MR. MAHONEY: The other one is in the submission of January 13, 1972. I, at this point, would like to ask that these two plans be marked specifically for identification with reference to this specific point.

MR. MORRIS: Well, we will try to cooperate with counsel. We have admitted into evidence all of the material, and evidently there was a former relocation plan. We do not have it here, but we have marked the one which came in as Exhibit 6 on November 28th. Now, we will refer a number, if you will, to the other thing, and unless both of you want to look at it here today, it will save us a little time. Do you want that labeled now?

MR. MAHONEY: We can wait for your convenience. Can we go on and we will come back to that?

MR. MORRIS: We hope to get out of here tonight, now, so I will give you a number. No. 50 on the original Relocation

Plan submitted.

(EXHIBIT NO. 50.)

MR. MAHONEY: Thank you, sir. Now, may I, for the record, also call your attention to the disapproval of the Relocation Plan submitted by the Redevelopment Authority, which an was/attachment of June 9 to the letter to Mr. Robert Kenney, which was the disapproval letter.

MR. MORRIS: We will take notice of that. Exhibit 5. That's already in evidence.

MR. MAHONEY: All right. One final point on this matter and we will move on to another point. The testimony now is, then, the Authority, that the Relocation Plan for which they gave notice -- for which they gave notice -- existed on 4/28/'72.

MR. MORRIS: We will take notice of that.

MR. MAHONEY: Which, in fact, gentlemen, if you will recall, was several months -- a month and a half or more -- before the existing Relocation Plan that had been submitted to you on January 13, '72, has been disapproved. There was no Relocation Plan for anyone to go and see on 4/28/'72, other than the one pending before it then, your Bureau of Relocation. I move on, now, with that.

MR. MORRIS: All right.

MR. MAHONEY: The so-called Relocation Plan which

has now been resubmitted with the additional materials by the Authority fails to conform to the statutory requirements as set forth in Section 4 of Chapter 79A and further fails to comply with the rules and regulations of the Bureau of Relocation. Section 4 requires the Relocation Plan to show (1) the number of individuals, families, and business concerns to be displaced on account of proposed acquisitions; (2) the date on which such displacement will begin; (3) the needs of the occupants to be displaced for relocation assistance; (4) the availability of safe, decent, sanitary housing and commercial buildings within the means of the occupants to be displaced; (5) a program for their relocation; and, (6) a demonstration in accordance with Bureau regulations that the relocation agency has coordinated the plans with other planned or proposed land acquisitions in the city or town which may affect the carrying out of the Relocation Plan.

In order to clarify the statutory requirements and cast them in terms that make the whole relocation process as workable as it can be under the circumstances, the Bureau of Relocation has adopted rules and regulations which we referred to earlier. These regulations are intended to apply to relocation plans for all urban renewal projects coming within the purview of Section 48 of 121B. They are designed to make as painless as possible a program of relocation for the victims of

takings by eminent domain. The regulations do not represent a checklist of technical niceties; they represent carefully developed procedural and substantive safeguards for those faced with the loss of home, livelihood, or property. Such safeguards are the very least that these people can ask of their government at a time when their government compels them to give up so much. It is not sufficient, therefore, to make grandiose promises of relocation payments when a plan does not show that the funds for such payments will ever be available. It is not sufficient to promise those displaced by urban renewal future space in a project, which may never be completed and where rents will be prohibitive for the small businessmen being forced out; it is not sufficient to make statements assuring the availability of the retail space in downtown Boston, without matching that space which is available with the needs and the resources of those to be displaced.

And while we all would like to believe it is unnecessary to question the ability of an agency to handle the needs of people being moved out wholesale, the long history of relocation experience, not only in Boston but throughout the country, and the continual legislative effort to find a way to deal with the suffering that it creates, does not afford us the luxury of complacency. So, we must be vigilant in our insistence that the

requirements of law and that the requirements of those regulations promulgated pursuant to such law be strictly adhered to. This does not apply to parcels A, B, and C alone.

For the purposes of City Council approval and for the purposes of strengthening its submission to this Department, the B.R.A. has chosen to make parcels D and E a part of its urban renewal plan. It has tried to visit the afflictions of the Combat Zone upon the buildings in the Park Square area; it has tried to associate decadence in D and E, with the absence of decadence in parcels A, B, and C. It has done this in order to offer the public a justification for the city's loan.

There is, however, no relocation plan for D and E. The Redevelopment Authority estimates -- see page 2 of the Financial and Relocation Data for Stage II; that is contained in Exhibit 6 -- that there are 187 business enterprises and 200 households in parcels D and E. Those who run these businesses and those who live within the boundaries of this area deserve to know whether they are part of a plan for clearance and redevelopment or not. They have been told in the media and are being told by the Authority that they are; yet, they are being offered no plan for their eventual relocation, nor are they even being assured of the safeguards required by law.

The Authority seeks qualification as the agency

responsible for the carrying out of this plan; yet, it refuses to accept responsibility as the relocation agency for parcels D and E. Are we, therefore, to infer those who live within these parcels are to be deprived completely of any relocation services, much less the protections the statutes and the regulations adopted pursuant thereto make mandatory?

Let us take the six requirements of 79A one by one and examine them in the light of the Department regulations; and in so doing, to the attachment of the June 9th letter from Commissioner Mahoney to Director Kenney entitled RELOCATION PLAN REVIEW, which contains the findings of the Bureau of Relocation with respect to the six statutory requirements.

The resubmitted Relocation Plan does not include a relocation program for the occupants of the project area. The first finding made by the Bureau on June 9, 1972, was that the relocation plan did not include a satisfactory relocation program for relocation payments and assistance. A major reason for that finding was that there "is no relocation program for parcels D and E." Thus, in order to fulfill this requirement of law, it was the belief of the Bureau of Relocation that there must be a relocation program for parcels D and E.

On page one of part three of the Agency Qualification Request and Relocation Program, the Department states that,

"The Authority's present intention as to displacement and relocation for Parcels D & E are set forth in the document entitled 'Financial and Relocation Data for Stage II.' At such time as acquisition is contemplated, we will prepare a supplementary amendment to the Relocation Plan and submit it to the Authority Board, the Mayor and the City Council as well as the Bureau of Relocation."

We now refer you to Exhibit 6 and a document contained as a part thereof under date of November 28, '72, submitted by the Authority to the Department, entitled FINANCIAL AND RELOCATION DATA FOR STAGE II (REDEVELOPMENT PARCELS D & E OR REUSE PARCELS 4 & 5) of the Park Plaza Urban Renewal Project. There the Authority estimates the cost of relocation at \$3,850,000. Nothing more is said about relocation in this submission beyond another Authority assurance that it plans to submit a relocation plan for parcels D and E at such time as acquisition is contemplated. Those are their words. If acquisition of parcels D and E is not contemplated now, what possible justification is there for including these parcels within the urban renewal plan? I have always been under the impression that parcels included in an urban renewal plan for which City Council approval and state approval is required are included for the purpose of eventually acquiring such parcels either for redevelopment or for

rehabilitation. The June 9, 1972, decision of the Bureau of Relocation with regard to this statutory requirement that there must be a satisfactory relocation program...

MR. MORRIS: Mr. Mahoney, we will take a five-minute break for the benefit of the stenographer.

(Recess.)

MR. MORRIS: All right, ladies and gentlemen, the hearing will resume. Mr. Mahoney.

MR. MAHONEY: The June 9, 1972, decision of the Bureau of Relocation with regard to this statutory requirement that there be a satisfactory relocation program is bounded also on the grounds that the provisions for relocation payments are not adequate for A, B, and C. I quote. The decision goes on to say, "If a business or household is required to be moved by public action, it must be given relocation payments; there must be a guarantee of relocation payments."

Unless the Bureau of Relocation can find an adequate basis to determine that there is now a guarantee of relocation payments, it cannot approve this so-called Relocation Plan under Chapter 79A. The Bureau states that, "The source of funds would have to be clarified," in order to demonstrate that there would be a guarantee of relocation payments; yet, in the resubmission, this has not been clarified. The same objections that were

raised by the Bureau of Relocation still stand. The Bureau states that, "The Letter of Intent is not a binding agreement." I agree; it is not a binding agreement. We have seen two instances by which they have unilaterally changed that agreement now and there's no need to go through those again. And I think it is very clear that that letter can be changed at any time, and that letter, and that letter alone, is the sole document upon which relocation provision payments rest. There is no other money. And if that letter is changed, as it clearly can be changed, there is absolutely no way that you or I or anyone else can guarantee that relocation monies will be paid for A, B, and C.

The Bureau pointed out as well, "The developer may cancel his obligations because of the conditions specified in the Letter of Intent. He may do this at any time by commencing construction on any parcel." This has not changed.

The Bureau stated, "The Letter of Intent and Plans specified that no development in A, B, or C will occur unless adequate financing is documented." None is documented at this time, so there can be no certainty that money will be available for parcel A or B or C. This, too, has not changed. The Letter of Intent still contains this statement, agreed upon by the proposed redevelopers and by a public agency entrusted to safeguard

the interests of the people: "It is understood that until possession of the property is assured by the eviction of all occupants and the city has provided satisfactory assurances as to the timing and completion of utilities' relocation, thereby making more certain the actual construction date, the availability of financing for construction (as distinguished from the commitment relative to financing of land acquisition, which shall be firm before land acquisition commences) will not be in the form typical of final letters of commitment, but such evidence of availability and commitment satisfactory to the Director shall be submitted with sixty (60) days of such completed possession."

Revised Letter of Intent, page 14.

I refer you back, if I may, with 60 days of such completed possession. No money guarantees until after the people have been thrown out.

The Authority estimates that the cost of relocation in parcels A, B, and C will total \$3,831,204. It assures the Department that the money is available for relocation assistance; yet, the developer is required to put up deposits totaling \$1,500,000, unless it should be designated at some future point in time developer of parcel D. If the latter should ever materialize, the developer will increase his deposit by a total of one and a half million dollars. By one-half million dollars;

excuse me.

The Bureau's decision states that the plan does not establish who, "if anyone, may be held liable if money is not available. The Authority and the City of Boston have disavowed liability. The final recourse seems only to be to the \$500,000 of the developer. A \$500,000 deposit is an inadequate guarantee."

Let me call to the attention of the Department that this, too, has not changed since the plan was disapproved. Let me call to your attention specifically page 37 of the resubmitted and revised Letter of Intent between Boston Urban Associates and the Redevelopment Authority, on which the redeveloper pledges a deposit of one half a million dollars and only at such time as "Urban commences construction of Stage A," shall Urban make available to the Authority the additional \$1,000,000 deposit.

If one recalls the previous quote which I cited in the Letter of Intent, page 14, one realizes that the promise of a firm commitment for acquisition financing bears no relation -- bears no relation -- to a guarantee for relocation costs beyond the \$500,000 that the Bureau has already said is inadequate. The Letter of Intent, at page 14, made as clear as clear can be the fact that there will be no commitment for construction financing until "possession of the property is assured by the eviction of all occupants." And we are now told that until

"construction does commence," the deposit will not be increased above \$500,000.

Gentlemen, they're telling you in plain, unvarnished language, Throw everyone out, evict them, and we will make no guarantee of money available to pay relocation benefits until and unless we begin construction. And on this coated arrangement they have for financing, with no equity, as we have been through many times before. It is as clear as can be, and I urge you to take this to your conscience, Commissioner, it's as clear as clear can be, that there is no guarantee that the monies will ever be here if these poor souls are evicted.

Thus, even though the Bureau made a guarantee sufficient to cover possible liabilities, a requirement for Bureau approval of the Relocation Plan, no effort has been made to rectify this past failure. All that has been done is that an assurance has been given that, if and when the redeveloper is designated developer of parcel D, the deposit will be increased to \$2,000,000. See the letter of September 12, 1972, from Mr. Zuckerman to Mr. Kenney. That's no agreement; no agreement at all. It's a promise to submit a proposal which could be good, bad, or indifferent, for parcel D; and, if the proposal is accepted, then they increase the deposit by \$500,000.

I point out to you that, on its face, as we have

"construction does commence," the deposit will not be increased above \$500,000.

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I point out to you that, on its face, as we have

discussed before, that says very clearly, within three years from the date of final approval by the state. And, God willing, that never comes--three years. But, the Council vote, as you well know, says that it's to be -- that D and E will be -- out of the plan three years from December 6, 1971. One-third of that time has already gone by.

Gentlemen, these people insult you. They think you won't remember these things, and they think that the people in this audience won't remember. But, they will remember, and they will remember the officials, the public officials, that are responsible for this outrage.

The increase in deposit that is held out to the public in no way strengthens the guarantee that must be made before people are evicted and before the relocation process begins. I dare say that the Authority certainly never informed His Excellency, the Governor, that they were not making available monies for guaranteed relocation payments. Frank Sargent's not the kind of man that would endorse a plan that would throw people out of their homes and out of their businesses with no guarantee of payment. I wonder what kind of representation he made to him when he so unfortunately endorsed this man, I'm sure in good faith. But, I'm sure he must have been misled.

On page 19 of the revised Letter of Intent, dated

November 28, 1972 -- see Exhibit 6 -- it is stated that Urban "understands that governmental assistance or subsidies may not be available in the future to assist in the project and Urban has advised the Authority that it is considering the feasibility of effecting financing of land acquisition costs, relocation costs, and demolition costs, if any" -- If any? -- "within the project area by the use of bond issues...in the name of the Authority..."

I call your attention, first of all, to the insertion of the words, "if any." What does that mean? There's some question? Some question whether there are going to be any relocation costs? This is an admission on the part of the developer and the Authority that the funds to cover the cost of relocation for this project are simply not available at this time. Indeed, it's another admission; I might say you have seen at other points in this Letter of Intent similar admissions.

The Bureau's decision of June 9, 1972, points out that the application of the Federal Uniform Relocation Act, P.L. 91 - 646, payments "may be expected to double the overall relocation payments budget; documentation is required to show the developer could provide 50 percent of the additional required funds."

The Authority has presented no evidence whatsoever

to show that the developer could provide 50 percent of the additional required funds. What the Authority does say, in part three, on page 1 of its submission, Agency Qualification Requests and Relocation Plan, is the following: "The City of Boston has entered into a cooperation agreement with the Authority thereby agreeing to provide the City of Boston's share of those funds which will be necessary to provide relocation payments at the levels set forth for federally-aided projects, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The projected annual payments of this share can be covered with the City of Boston's loan order for relocation payments."

This assertion is not backed up by evidence or documentation. And let me stop to say that, if you will look at the project improvements costs, you will see that the \$6.8,000,000 is going to be used entirely for the project improvements cost. And nothing -- absolutely nothing -- in the city loan order provides that that money is to fund the relocation costs. That is an outright misrepresentation to you, absolute and clear misrepresentation. This assertion has not been backed up by evidence or documentation. We are not told the terms of it; we are not told the terms of the Cooperation Agreement in question, or the amount of the loan order for relocation payments, or the

other relocation costs for other projects in the City of Boston which the loan order is intended to cover.

In order to provide minimal safeguards for the occupants of the project area to be displaced, the Bureau decision of June 9th also states that, "The following paragraph would have to be included in the amended Letter of Intent:" And again from that letter: "While time is of extreme importance in this project" -- This is June 9th -- "Urban agrees that proceedings for eviction for any particular occupant may not begin until at least three referrals have been given by the B.R.A. to the occupant that are decent, safe, sanitary, within the means, suitable to the needs and reasonably suitable to the preferences of the site occupant."

Nowhere in the Letter of Intent have these words, as set forth in the Bureau decision, been included. They have thumbed their nose at the Relocation Bureau. The Authority does agree, on page one of part two of the Agency Qualification Request and Relocation Plan that, "Eviction of a tenant can only be undertaken after refusal of three or more suitable spaces."

The Authority does not include, however, the words that reflect the requirements of Chapter 79A, "that they are decent, safe, sanitary, within the means, suitable to the needs

and reasonably suitable to the preferences of the site occupant."

For all these reasons, for its failure to document available funding to cover relocation costs, for its failure to establish liability either on the part of a financially solvent redeveloper or the Authority or the city, for its failure to include a guarantee of more than \$500,000 on the part of the redeveloper, for its failure to comply with the explicit and express requirements of the decision of the Bureau on June 9, 1972, the Authority has failed to meet the statutory requirements of Chapter 79A, that the relocation plan include a satisfactory relocation program for the occupants of the project area.

The next subject is the resubmitted relocation plan fails to show the number of individuals, families, and business concerns to be displaced.

The Bureau found on June 9, 1972, that it could not make the finding required by law that the relocation plan show, "The number of individuals, families, and business concerns to be displaced on account of the proposed acquisitions." The resubmitted Relocation Plan does not comply with this requirement.

An estimate of the occupants of D and E is made in the sub-section entitled "Financial and Relocation Data for Stage II (Redevelopment Parcels D and E or Reuse Parcel 4 and 5)

of the Park Plaza Urban Renewal Project." But, again, there is no documentation to support this estimate. We believe that more is responsibly required. The resubmitted Relocation Plan fails to include the date on which displacement will begin.

The Bureau also found in its June 9, 1972, decision that the Relocation Plan did not include "the date on which such displacement will begin." And I might say, what could be more fundamental? What could be more basic, if we are going to have an enlightened public policy, than to have people know when they are to be displaced? There is still no date specifying when displacement will begin on parcels D and E. As the Bureau rightly pointed out, there can be no such plan because there is no urban renewal plan for D and E.

The Authority has included in its Agency Qualification Request and Relocation Plan -- see part three, page two thereof -- an estimate of the dates on which relocation will begin in parcels A, B, and C. But, please, on page four of the revised Letter of Intent, it is stated that the actual timing and program of development "will be adjusted as to be mutually agreed to reflect causes beyond Urban's reasonable control, including past and future delays in the approval of the project and the availability of land for various stages of development."

In other words, the June 9, 1972, disapproval of the

project is an already justifiable ground , "beyond Urban's reasonable control," for adjusting the program of development and the timing and phasing of such development.

The Letter of Intent submitted November 28, 1972, goes on to make this even more explicit. "For example, the area presently proposed to be improved with a hotel and parking garage is entitled 'Stage A.' References hereinafter to such development schedule or to any stage described therein or to the timing of any stage of the development shall be deemed to include such adjustments as may be mutually agreed by reason of such causes."

If, therefore, the Redevelopment Authority and the developer already have the flexibility and the option to change the timing of the various stages, one must call into serious question the commitment made to begin displacement at the time set forth in the Agency Qualifications Request and Relocation Plan.

The next objection. The resubmitted relocation plan fails to show the needs of the occupants to be displaced for relocation assistance.

The Bureau of Relocation stated in its June 9, 1972, decision that the Authority had failed to comply with the statutory requirement that the relocation plan show "the needs of the occupants to be displaced for relocation assistance." It made

this finding for three overall and several subsidiary reasons.

The first overall reason for making the finding of noncompliance was that no description of the needs of the occupants in parcels D and E had been included in the Relocation Plan. There still is no description of the needs of those operating businesses or living in parcels D and E.

The second overall objection on the part of the Bureau on June 9, 1972, was that the plan did not adequately describe the needs of the nonresidential occupants in A, B, and C. The Bureau asserted that "unless documented evidence to the contrary is submitted in the Relocation Plan, it must be assumed that businesses operating in the central downtown area require and/or prefer that centralized location and its accessibility in order for the concern to function satisfactorily...The relocation plan would have to include a much more rigorous analysis of the special relocation needs of downtown businesses and other residential concerns."

The response to the Authority of this objection by the Bureau and to its requirement for more specific information is simply to completely ignore the thrust of this most serious objection. Rather than dealing with or even exploring the preferences of the project area occupants for centralized downtown locations, the Authority merely recites the number of businesses

that are ground-floor tenants and the number that are upper-floor tenants. This kind of information is not at all to the point. The Bureau specifically asked for a more rigorous analysis of the "special location needs." It is not requiring just a mere specific analysis of a special location needs within a building; for example, which floor a business would find more suitable for its purposes. It is talking about where in the city a business now located downtown would be most likely to function satisfactorily, in its words, and enjoy the advantages of its current "centralized location."

The decision of June 9, 1972, further stated that the Plan did not "adequately describe the needs of the nonresidential occupants in terms of the rents they are able to pay or purchase price able to pay; since rents or present building equity is one indication of ability to pay, the present rent or present equity would have to be included for every nonresidential occupant."

Nowhere -- absolutely nowhere -- in the new resubmitted Agency Qualification Request and Relocation Plan is there a listing of the present rent or the present equity of each of those within the project area. Once again, there is authority which cares not about the people of this city, has thumbed its nose now at the Governor of this Commonwealth, whom they have

lured into giving a broad general endorsement of this plan, I'm sure not knowing -- I'm sure not knowing -- that the humane needs and legitimate concerns of relocatees had not been provided for and, also, gentlemen, at this agency and your Relocation Bureau. The Authority has included what purports to be a summary of the number of establishments within various rent ranges. But, the Bureau required something more, much more. It has required genuine documentation based on an actual measurement of the ability to pay of each of the occupants in the project area. And frankly, it's a good thing that we have had the Relocation Bureau. I can imagine what would have happened to the people in this area without it.

On page four to five of the decision rendered by the Bureau of Relocation on June 9, 1972, the Bureau states that the plan does not completely describe the space needs of the non-residential occupants. There, the Bureau states "of the 205 nonresidential occupants listed in the plan, 157 have a notation of square footage occupied. However, for 48 concerns this information was omitted. This information would have to be submitted for the 48."

Once again, the Bureau sets forth specific information which the Authority would have to furnish, if the resubmitted Relocation Plan were to be approved. Six months has gone

by; the Authority has failed to comply with the requirements of the Bureau.

On page ten of the Agency Qualification Request and Relocation Plan, part three, the Authority states, "While we were unable to obtain square footage information on 48 firms, the Authority estimates that space occupied by those tenants for which square footage has not been given previously is as follows: Ground, 21,500 square feet; upper, 11,900 square feet; miscellaneous, 69,700 square feet."

In other words, the Authority has been unable or unwilling to provide the specific information requested and has taken the easy, undocumented way out of making a general guesstimate of all 48 firms.

The third overall reason for the Bureau's finding on June 9, 1972, that the Authority had failed to meet the statutory requirement that the Relocation Plan show the needs of the occupants to be displaced for relocation assistance was that the Plan "does not adequately describe the needs of the residential occupants of parcels A, B, and C." In regard to ability to pay, incomes for only ten households out of 26 cannot be considered adequate description of needs in terms of ability to pay, said the Bureau. This, too, has not changed. The Authority still omits the information about a number of households in parcels

A, B, and C. Once again, we have an estimate of income, which the Bureau's June 9th decision stated was simply not adequate as a basis on which they could rely.

For all these reasons, the Plan fails to show the needs of the occupants to be displaced for relocation assistance. A showing of the needs of occupants to be displaced for relocation assistance is the fundamental component of any decent relocation plan that is worth more than the paper it's written on. Without such a showing, supported by decent, honest, and detailed documentation, this Bureau cannot and should not approve a relocation plan under Chapter 79A. The resubmitted Relocation Plan fails to show the availability of safe, decent, sanitary housing and commercial buildings within the means of the occupants to be displaced.

Another of the six statutory requirements of Section 4 of Chapter 79A is that the plans show "the availability of safe, decent, sanitary housing and commercial buildings within the means of the occupants to be displaced." And in its decision on June 9, 1972 the Bureau of Relocation ruled that the Authority had failed to comply with this requirement of the statute.

I might point out, how many of these matters are statutory? This isn't something that the Lt. Governor, as has

been charged, and this Commissioner, and others, have gotten, for example, to impose on this Authority. These are statutory requirements, and they have not been met.

The Bureau found that the Relocation Plan did not include a showing of either the availability of safe, decent, sanitary housing within the means of residential occupants of the area, nor of safe, decent, sanitary commercial buildings in the area within the means of the nonresidential occupants of the area. There is no showing whatever that there will be housing and commercial buildings available for the dislocated parcels D and E.

Once again, they are the victims forgotten in this plan. This relocation, this requirement of the statute, is designed to insure that, whether or not there is adequate office space or retail space available in the locality to meet the space needs of those to be displaced, there will also be the kind of space for which the relocatees will have the ability to pay. It requires that the relocating agency make an in-depth analysis of the resources available and match these with the incomes and current rent levels of the project area occupants.

Among the reasons for making its determination on June 9, 1972, that the Authority had failed to meet this test, the Bureau cited the Authority's failure to show that "There are

resources available within the means to pay of the businesses in A, B, and C." With regard to retail space resources, the Authority includes vague statistics about the vacancy rate in downtown store space, letters from local realty firms and glowing projections of future retail space available as a result of other urban renewal projects, but the Authority still fails to come to grips, as it did originally six months ago, with the critical question of phasing. Far more important than gross amount of commercial retail space available is a comparison of probable dislocation of businesses from the Park Square area with the consequence of time periods in which various amounts of space will become available. Still no answer to this crucial question is ventured in the so-called Relocation Plan submitted to the Department on November 28, 1972. It has never even been considered.

The Bureau also cited in its June 9th decision the failure of the Authority to deal with the special relocation needs of certain of the area occupants. The Bureau states, "The feasibility of successful relocation of the concerns with liquor licenses will have to be documented in detail. Additional resources suitable to the Seaman's Friend Society would have to be submitted. Firm commitments for adequate relocation of the Trailways Bus Terminal would have to be submitted."

These are three specific requirements set forth by the Bureau in its disapproval of the last relocation submission. That was June 9th, 1972. Has the Authority met these requirements? Has it documented in detail the feasibility of successful relocation of the concerns with liquor licenses? Nowhere in its Agency Qualification Request and Relocation Plan is this problem even discussed.

Has it submitted resources suitable to the Seaman's Friend Society? The answer is, flatly, No. On page eight of its Agency Qualification Request and Relocation Plan, part three, the Authority states that it is "presently endeavoring to find suitable, equal sized buildings which are or have been hotels" for the Seaman's Friend Union.

Obviously, it has been having difficulty since June 9, 1972, in meeting this special need. Have firm commitments for adequate relocation of the bus station been submitted? Again, the answer is, No. All that we are told is that the Authority "has a home rule bill before the City Council to allow the city to make a site in the South Station area available as a temporary location for bus companies."

Again, part three, page eight. Another oft-repeated answer wearing very, very thin.

The Authority has failed to meet these three specific

requirements of the Bureau of Relocation, because it cannot do so. And, if it cannot meet these requirements after six months, it has no business claiming that it has a satisfactory program for relocation of an entire project area. If it cannot meet the needs of three specific categories of persons in six months' time, how can it tell this Bureau that it can meet the needs for all within each of the parcels in the project area?

Mr. Kanin advises me we have had a request that there are two or three people who wish to come on just for a moment and testify.

MR. MORRIS: All right. What I will do, I will entertain those persons to go on the record, then I am going to declare a seven to ten-minute recess, and then the hearing will resume until we make a judgment later as to how far you are going.

Will you state your name?

ROBERT J. ABRUZZO

Boston Resident

My name is Robert J. Abruzzo, 112 Hillside Street in Boston; I represent I am a member of a class, the extent of which is not yet determined, but includes not less than ten taxable inhabitants of the Commonwealth. I further represent that the Park Plaza project so-called will act to effect a prime denial

or otherwise endanger certain rights secured to this class by the 97th Article of the Amendment to the Massachusetts Constitution. Without limiting the generality of the foregoing, these rights include the right to clean air and water, the right to aesthetic enjoyment of the natural environment, and the right to the preservation of historical sites.

For myself, and on behalf of the class, I ask you to rule that the Department of Community Affairs and the Commissioner thereof is estopped from making any determination or finding under Chapter 121B, Section 48 of the General Laws until a determination of the project's effect on the right-sided has been made and until the Commissioner and the class have been satisfied that all practical measures have been taken to avoid or minimize such effect and until just compensation for any unavoidable effect has been determined and secured for the benefit of the class.

MR. MORRIS: We will accept your testimony as a citizen on the basis as submitted; however, we will not consider your request for a ruling at this point as a citizen, on the grounds that you have not laid the appropriate foundation for such a ruling by merely making a statement as a citizen; however, we will take judicial notice of what you quoted and the Commissioner will look into it, but he will not be bound by a ruling

by the Chair at this point, that he will not proceed with findings as required by another statute because of what you said. We thank you for your testimony. And before you leave, are there any questions of this gentleman?

MS. BURNS: Could we have the spelling of his name?

MR. ABRUZZO: A, b, r, u, z, z, o.

MR. MORRIS: Thank you very much for your testimony and the constitutional and other references. Was there another gentleman, or lady, who wanted at this time to go on the record? Your name, sir?

MARTIN ZIMMERMAN

Cambridge Resident

Yes, my name is Martin Zimmerman; I am a resident of 65 Dana Street in Cambridge.

MR. MORRIS: Now, I notice you have rather extensive notes. Can you give me some general idea of how long you will be testifying?

MR. ZIMMERMAN: Five minutes.

MR. MORRIS: All right; thank you.

MR. ZIMMERMAN: I'm an architectural designer and planner; I'm also an Associate Member of the Boston Society of Architects and a member of the Boston Society of Architects' Urban Design Committee.

I personally am opposed to Park Plaza Project. On August 9th, 1972, the Boston Society of Architects held a general membership meeting to examine the status of the Park Plaza project at that present time. As a result of this meeting, and others, of the Urban Design Committee, the Society adopted the following reservations to its original endorsement of the project of November, 1971. I quote from a public statement issued on October 12th, 1972:

(1) There has been too little public and professional review in the determination of the desired character of the Park Square area;

(2) Inadequate information has been made public regarding the future need for services, such as sewers, police, rubbish collection, transportation, resulting from the project and its consequent cost benefits;

(3) Inadequate consideration has been given to the area's historic and environmental qualities in the determination of the project's character;

(4) Design controls are not specifically enough defined to provide an adequate basis for design review; and,

(5) Provisions for relief of hardships resulting from relocation and property acquisition are inadequate to provide reasonable and equitable protection and compensation to

displacees.

On October 10, 1972, the Board of Directors of the Boston Society of Architects agreed to adopt these reservations to its endorsement of the Plan. End of quote.

Last Tuesday -- January 16th -- a new statement was read to this hearing by John Harkness, president of the Boston Society of Architects, concerning the project and the conditions of the Society's support for it. Afterwards, I asked Peter Roudebush, the Chairman of the Society's Urban Design Committee and a member of its Board of Directors, the following questions:

(1) Whether this new statement had in any way changed the Society's position on the project;

(2) Is the Society supporting the B.R.A. in an appeal to the state on behalf of the Park Plaza Project? And,

(3) Did this Society consider that its reservations of October 12th had been met in the resubmitted plan?

Peter Roudebush made the following responses, and I quote in answer to point one:

The only official position of the Boston Society of Architects was stated last October and was passed unanimously by its Board of Directors.

Tuesday's statement, which I participated in drafting, was not intended in any way to change this position.

Two, the Society is by no means supporting the B.R.A. in an appeal to the state on behalf of this project. The Society's position is that it supports a redevelopment of the Park Plaza area, provided the proposed plan is in strict conformance with the letter and intent of the state law and provided, further, that the meaningful participation of a project advisory committee is made an effective part of this plan.

And, in answer to point three, the Society has had only two weeks in which to review the resubmitted material provided by the B.R.A. It cannot state at this time that any of its reservations to the plan have been satisfactorily met or can be met in the resubmitted plan. It fully intends to continue its review of the project and will submit its findings to the B.R.A. and Department of Community Affairs. End of quote.

Personally, I think the Society should have opposed the Park Plaza Project. I would like to enter the following other statements for the record as a basis of my own personal request at this time:

That the state not allow the project to proceed.

MR. MORRIS: Are these your statements or someone else's?

MR. ZIMMERMAN: These are entirely my own statements, yes, which will be approximately two minutes.

MR. MORRIS: Go ahead.

MR. ZIMMERMAN: There are four points. First, the B.R.A. claims to have carefully planned the development of this area and intends to administer an effective design review during its further development. But, what about its past development? Can we rely on the rules of the developer's kit, which was originally issued by the B.R.A. to all developers? The original kit contained height restrictions which were later disregarded by the designated developer.

What about the future? We read that the developer, in the developer's letter of intent, that the building study submission to the B.R.A. must be in conformity with the so-called conceptual design, heretofore submitted by Urban Associates; and, if, in the review process, it is found that this conformity exists, then the approvals of design will not be withheld, are we to believe this letter of intent? If so, then we must assume that the conceptual design is already fixed.

In other words, if the wind consultant recommends that the tower proposed for Park Square, which is planned to be the height of the John Hancock building, should be reduced in half for the safety of pedestrians, the developer and the B.R.A. say that can't be done. Why? Because it doesn't conform to the conceptual design. What, then, should we believe? What are the

rules? Are they in the conceptual design which has been already fixed, or are they the rules which were originally issued to the developers, and which we know have already been violated? Is this what is meant by effective design review?

The second point is that the city plans to invest \$6.8,000,000 in this project. I think this has been gone into in some detail. Under the current plan, the money will be used in the first stage of the project. Under other redevelopment programs, such as the Urban Development Corporation in New York State, this money could remain part of the city's equity to be used to negotiate better development on other sites or returned to the city itself. Is this the city's idea of a sound financial plan?

Three, the B.R.A. has stated that they will hire consultants to investigate the environmental impact of the plan. The Letter of Intent states that, within three months following state approval of the plan, Urban will have completed a "building mass use and location study which shall take into account, among other things, aesthetic and economic factors and shall form the basis for subsequent schematic designs."

It is questionable whether any consultants could provide meaningful input to this study in such a short period of time. Why haven't they already been put to work to answer the

legitimate questions asked by the D.C.A. in its previous review of the project's environmental impact?

Four, the B.R.A. has claimed it will create a community advisory committee. The Letter of Intent states that the rules and regulations governing state-aided urban renewal projects will not apply to this project. These rules and regulations contain guidelines for the structure of such a committee and require that it participate meaningfully in decision-making with respect to a given project.

The B.R.A. announced its intention to form an advisory committee for the Park Plaza Project only one week before this present hearing began and has offered no guidelines or commitments with respect to its operation. In fact, the letter of understanding distributed by Mr. Kenney does not even state that this committee will review the project. The use of such committees is a recognized requirement of both state and federally funded programs throughout the country.

The unwillingness shown by the B.R.A. to initiate such a program for this project well in advance of this hearing suggests that it has no intention of permitting this project to undergo public scrutiny and that it is unwilling to apply equivalent safeguards to its own constituency as those required by federal and state governments.

And, lastly, the present market for office and retail space is not strong. Boston's most prized luxury housing project, on the waterfront, is in trouble. Suppose the New Charles Street and hotel team are built but the market remains poor for the remaining parcels 2 and 3; the developer will wait for the market to improve. The B.R.A. will want to fill the empty land of other landowners not yet acquired, who will not have maintained their buildings. Some may have simply moved out. How strongly can the B.R.A. be expected to insist on good design and careful execution of these remaining parcels? And, if they don't, why are we doing this project?

In conclusion, I wish to say that I am not against the high-rise buildings and I'm not against development in/Park Square area, but I am convinced that the proposal we are considering today does not warrant state approval at this time. If allowed to proceed, I fear that the public outcry will be so great as to ultimately jeopardize all city planning programs, both good and bad, whether federal, state, or local.

I urge the Department of Community Affairs to reject Park Plaza. Thank you.

COMMISSIONER MILES MAHONEY: Let me apologize for smiling during the testimony, but it bore no relationship whatever to the contents of the testimony. It was Mr. Morris'

comment on leaving that he was sure you were one hell of an architect, but he would not even trust you with a stopwatch for a foot race.

Are there any questions of the witness? Yes.

MS. BURNS: How many registered architects are there in Massachusetts?

MR. ZIMMERMAN: I don't know how many there are. There are approximately 700 in the Boston area.

MS. BURNS: Seven hundred in the Boston area.

MR. ZIMMERMAN: Yes.

MS. BURNS: Of those 700, do you know if they are American or are they foreign?

MR. ZIMMERMAN: I don't know.

COMMISSIONER MILES MAHONEY: Are there other questions of the witness? (No response.)

We will recess now, then, for Mr. Morris' seven minutes. (Recess.)

EVENING SESSION

MR. MORRIS: The hearing will resume, gentlemen.

COMMISSIONER MILES MAHONEY: Before we resume here, just for the edification of all those who listened to the exchange about whether or not there would be oral testimony from the Redevelopment Authority, we were advised during the recess

that Mr. Kenney could appear but would only read a statement that will be submitted regardless; so, we are not suffering from a collective lobotomy that Mr. Mahoney referred to earlier, and we can read the document when it comes. So, his presence can be dispensed with.

MR. MORRIS: Thank you, Commissioner. We will proceed.

CHARLES F. MAHONEY, Resumed

Excuse me. May I direct a question to you, Mr. Morris? I'm not at all together clear about the Commissioner's statement. Is that a ruling by the Department, then, that it will not permit an opportunity for examination as to the materials that are to be submitted by Mr. Kenney?

MR. MORRIS: I don't think the Commissioner intended that or said that.

MR. MAHONEY: I wasn't sure.

MR. MORRIS: He merely suggested, because he has been informed that Mr. Kenney won't appear and will probably offer a statement, that this will be the best that will be available, and that, obviously, it will be a part of the record for you to examine reasonably whenever it does appear.

submitting

MR. MAHONEY: And as to materials pertaining thereto?

MR. MORRIS: That is right.

MR. MAHONEY: Thank you, sir. Shall I resume?

MR. MORRIS: That is, within a reasonable time.

MR. MAHONEY: I understand, Mr. Morris. Shall I proceed?

MR. MORRIS: Yes.

MR. MAHONEY: The resubmitted Relocation Plan fails to demonstrate that it is coordinated with other planned or proposed acquisitions. The sixth requirement of Chapter 79A, Section 4, is that the plan demonstrate "in accordance with Bureau regulations that the relocation agency has coordinated the plan with other planned or proposed land acquisitions in the city or town which may affect the carrying out of the relocation program."

The Bureau regulations, Section 4202.2E, require that the Relocation Plan show "that the relocation agency has made adequate arrangements to coordinate its program with all concurrent displacement, phased by year, and has coordinated its Relocation Plan with all other planned or proposed acquisitions in that city or town."

The Agency Qualification Request and Relocation Plan resubmitted on November 28, 1972, shows not a trace of evidence that the Redevelopment Authority has even attempted to coordinate its Relocation Plan for Park Plaza residents and businesses

with other displacement or acquisitions in the City of Boston. In the long run, the refusal of the Redevelopment Authority to take this requirement seriously may cause great hardship not only to businesses located in the Park Plaza area, but also to businesses and families throughout the city that are slated for displacement over the next ten years.

Thus, the Redevelopment Authority has failed with respect, now, to the requirements of Section 4, Chapter 79A, to meet each and every one of the six statutory requirements of Chapter 79A, Section 4. In light of the finding of the Bureau of Relocation on June 9, 1972, and the explicit reasons set forth by the Bureau for such findings, one would think that the Authority would have made some genuine attempt to meet these requirements of law and to give some assurance to the people of the Park Square area, and, yes, particularly to the people of parcels D and E, that the only agency in Boston entrusted to provide relocation services is working for them. It has failed to do so, and its so-called Relocation Plan cannot lawfully be approved under Chapter 79A.

As to the request by the Authority for agency relocation, let us review, briefly, that category; the regulations of the Bureau of Relocation of the Department of Community Affairs, Section 2, sets forth at pages 158 through 162, inclusive,

the provisions for the qualification of a relocation agency to provide relocation assistance for any acquisition involving the displacement of the occupants of six or more dwellings or business units. These regulations were made pursuant to Section 2 and 3 of the Massachusetts General Laws, Chapter 79A, and were promulgated in accordance with Section 12 of that Chapter.

The Bureau of Relocation, in its decision of June 9, '72, refused to grant the agency qualification request of the Boston Redevelopment Authority as this relocation agency for the proposed Park Plaza Urban Renewal Project. Failure of the Authority to submit the names and addresses of all occupants to be displaced to the Bureau of Relocation.

Section 4101 of the Bureau of Relocation regulations, page 158, requires that "the names and addresses of all families, individual householders, and businesses on site are to be submitted to the Bureau." In its disapproval of June 9, 1972, the Bureau stated that one of the reasons for turning down the Authority's request for qualification was its failure to include the names and addresses of occupants in parcels D and E. The Bureau stated, "All names, including those for D and E, must be submitted to the Bureau of Relocation before any agency may be qualified."

The November 28th resubmission of the Authority is

still totally devoid of the names of the occupants of parcels D and E and, therefore, once again, the Bureau cannot qualify as the relocating agency for this project. Cannot qualify the Authority.

Failure of the Authority to request qualification for entire project area. Section 4102 of the Bureau regulations, at page 158, requires that the taking agency "notify any community groups or civic organizations interested in the project of such request" for agency qualification.

The Bureau of Relocation stated in its June 9, 1972, decision that the notices of the agency published in the Boston media on April 18, 1972, "indicates that agency qualification is being requested only for stage one, sometimes referred to as parcels A, B, and C."

Continuing, "The Bureau does not recommend qualification for a relocation agency for only part of a proposed urban renewal project. Partial qualification means that those businesses and householders now located in parcels D and E would not have access to a relocation agency for advice, assistance, and claims processing and payments. This puts an unreasonable burden on those site occupants and cannot be recommended by the Bureau of Relocation. No agency will be qualified unless for the entire project, parcels A, B, C, D, and E."

The Authority makes crystal clear, in its Agency Qualification Request and Relocation Plan submitted on November 28, 1972, Exhibit 6, that it has no intention of providing the information necessary for parcels D and E or for requesting qualification for the relocation of those within parcels D and E.

The Bureau has made it equally clear that, unless the Authority does request qualification as the relocation agency for parcels A, B, C, D, and E, no request for qualification can be approved. Failure of the Authority to show sufficient legal authority to implement an adequate Relocation Plan -- Section 4103.1 of the Bureau regulation, page 158 -- requires that "the proposed relocation agency has or will have sufficient legal authority to implement an adequate relocation plan."

The Bureau, on June 9, 1972, found that there were questions raised "in regard to the legal validity of the proposed Park Plaza Project; unless and until these questions are satisfactorily resolved, the Bureau cannot find that the proposed agency has the legal authority to implement the proposed relocation plan."

The failure of the Authority to correct the many legal defects in this urban renewal plan, disapproved in the first instance on June 9, 1972, makes this particular finding of the Bureau as true today as it was on June 9, 1972.

Failure of the Authority to show sufficient financial resources, present or future, to meet the cost of relocation assistance in a timely manner. Section 4103.2 of the Bureau regulations, page 158, requires that a proposed relocation agency document its contention that it "has or will have sufficient financial resources to meet the cost of relocation assistance in a timely manner."

The Bureau could not make this finding on June 9, 1972, and for the very same reasons it cannot make this finding now. The same objections still pertain. The Relocation Plan is still unclear in regard to how relocation costs are to be funded. The conditions still exist in the new Letter of Intent under which the developer may cancel his obligations. The Letter of Intent itself is not a binding agreement; the Letter of Intent and the Plans still specify that no development in A, B, or C, will occur unless adequate financing is documented. And none is documented at this time. The procedure for processing claims is still unsettled. The Plan still does not establish who will be liable for money that is not available. Documentation is still not furnished to show that the developer could provide 50 percent of the additional required funds to meet the provisions of the Federal Uniform Relocation Act, P.L. 91 - 646. There still has been no adequate showing that the city has the funds to pay

the 50 percent share of the increased relocation payments beyond the September, 1970, level, as provided in the Plan, and it is still unclear from what source administrative and staff costs will be made.

Each and every one of the nine objections set forth in the Bureau's decision on June 9, 1972, with regard to this requirement of the regulations, holds true today as it did on June 9, 1972, and on January 13, 1972. The Authority has referred to the questions but, in its answers, it has completely skirted them. The answers are vague and they are merely conclusory. They are statements of belief unsupported by documentation and certainly unsupported by their past performance.

The failure of the Authority to show adequate staffing for implementation of the Relocation Plan. Section 4103.3 of the Bureau regulations requires that "the number of those presently or to be employed by the relocation agency is adequate to implement the Plan and that a sufficient number of staff will be retained to the conclusion of the relocation program," and that this documented to the satisfaction of the Bureau -- see page 158.

The Bureau of Relocation found, on June 9, 1972, that the Authority had failed to show adequate staffing for the project and failed to document the total -- the number of staff

assistants who would be assigned to the relocation of 26 households and 207 businesses. Specifically, the Bureau required the following: "To establish that other concurrent relocation programs are not inadequately staffed, the request would have to be supplemented by a complete table of organization showing all current relocation programs, and the staff assigned to each project by their name and grade, and the percentage of staff time allocated to each project to which the staff may be assigned. This information is particularly necessary in the light of the ad hoc staff arrangements required recently to serve in businesses being displaced within the South Station project."

On page two of part three of the Agency Qualification Request and Relocation Plan, submitted on November 28, 1972, by the Authority, this requirement of very specific information with regard to the staffing of all relocation projects being carried out by the Authority is unanswered by the Authority. It states, "It is the policy of the Authority to transfer relocation personnel from one project to another, as project loads change. The Authority shall continue this policy in the case of the Park Plaza project and shall make certain that the project is staffed with the necessary number of trained personnel." This is the entire reply of the Authority to the requirements of Section 4103.3 and to the specific requirements set forth in the

Bureau's June 9th decision. Is this a complete table of organization? Is this a showing of all current relocation programs in the staff and the staff assigned to each project? Or, is this just another example of the Authority's refusal to comply with the requirements of law which have been developed over time to ease the terrible burden of relocation? Perhaps the Authority thinks that all this information is unnecessary and that, when the time comes, it can handle any problems in its own particular fashion and by its own measurements of adequacy.

If the Legislature believed that this were true, or if experience has shown this to be true, and if the Bureau of Relocation, on the basis of that legislative mandate and on the basis of that experience, had believed it to be true, Chapter 79A would never have been enacted and the regulations of the Bureau would never have been adopted, and the determination of the Relocation Plan approval would have been included in Chapter 121B, Section 48.

Failure of the Authority to show that it has acceptable standing in the community. Finally, the Bureau regulations, Section 4103.4, at page 159, requires the proposed relocation agency to document to the satisfaction of the Bureau that "...the agency has acceptable standing in the community. This may be determined by the Bureau considering the following

criteria: (A) Opinion of community groups and civic organizations; (B) Past performance, if applicable.

The Bureau decision of June 9, 1972, took note of this requirement that made no ruling as to whether it had been met by the Authority. It rested its decision to reject the Authority's request for agency qualification on other grounds, which I had cited earlier in this section of my presentation.

The Authority has presented no documentation in its resubmitted request for agency qualification to show either on the basis of its past performance or on the basis of the opinions of community groups and civic organizations that it has acceptable standing in the community.

You will recall Father Bucke, in his testimony at this proceeding on January 18th, challenged the Authority to produce witnesses willing to testify to the success of previous Authority relocation operations as the result of their own experience. Father Bucke is a very respected member of this community and one who has devoted himself particularly to the needs and hardship concerns of persons affected by relocation.

The parade of relocatees, whoever enjoyed the benefits of the Authority's past accomplishments in this area, has not materialized; instead, you have heard previous Authority relocation operations condemned by some who have witnessed them

in action. And you have heard others, occupants of the project area, assert that they have never been contacted by the Authority in the one and a half years since the Authority first formally approved the Park Plaza project.

Until the Authority produces actual documentation to affirmatively demonstrate that it has "acceptable standing in the community," as spelled out by the regulations, there can be no justification for assuming that it does or for approving the agency's qualification request.

The Redevelopment Authority has failed to meet the most minimal requirements necessary for qualification.

Let me say a general word about the task of relocation. Successful relocation cannot be measured by an agency's efficiency in clearing an area for private development. I specifically call, as a measure of this, by the way, to your attention, that provision in the Letter of Intent of November 28th, which I earlier cited, which provides direct evidence of its agreement with the developer to evict people on a wholesale basis. Does this sound to you like an agency that's concerned about the needs of the people in that area? They're concerned about their arrangements with their handpicked developer. In clearing an area for private development, one cannot legitimately be concerned about efficiency as measured by efficiency experts;

rather, it must be measured in terms of the assistance it provides to those facing forced dislocation. More than almost any governmentally-imposed process, relocation jars and disrupts and often completely alters the lives of people.

You heard Councillor Iannella testify most eloquently on this point when he appeared here.

FROM THE AUDIENCE: Why didn't you help them at this time? I'm sick and tired of listening to this all day.

MR. MORRIS: Order, please.

FROM THE AUDIENCE: There is no order. That's the problem.

MR. MORRIS: We can appreciate your concern.

FROM THE AUDIENCE: Thank you.

MR. MORRIS: The hearing will proceed.

MR. MAHONEY: I'm sure the panel takes note of this woman's anguished concern. Successful relocation requires dedication, it requires commitment to making those changes as painless as possible, it requires compassionate and continuous contact with and ministration to the needs of those threatened with dislocation. Without these qualities, no relocation effort can be successful.

The Bureau of Relocation has given recognition to this fact in its regulations designed as they are to insure that

a proposed relocating agency will demonstrate that commitment by its failure to comply either with the requirements of Chapter 79A or with the Bureau regulations. In almost every instance, the defects in its prior submission still permeate the Authority's plan for relocation submitted to you here. The Bureau cannot, therefore, on the basis of its November 28, 1972, resubmission, approve the Relocation Plan under Chapter 79A.

The next heading is: The Plan Fails to Protect the Public Interest.

MR. MORRIS: Is this a finding?

MR. MAHONEY: I am about to explain that; yes, sir. It's not one of the enumerated statutory findings. I will explain that.

MR. MORRIS: Can you make a summation of your argument?

MR. MAHONEY: I will.

MR. MORRIS: I am not trying to cut you off, but I have been following you along the line of statutory findings so far. You seem to have changed your strategy a little bit.

MR. MAHONEY: Okay. The Department, in addition to the enumerated statutory determination required to be made in Section 48, and in approving or disapproving an urban renewal plan, may disapprove a plan for other valid reasons. A failure

of the plan to adequately protect the public interest is such a reason. But, what I am saying, Mr. Examiner, under Section 48 -- I am referring to Chapter 121B, Section 48.

MR. MORRIS: Where are you now; in the statute or outside of it?

MR. MAHONEY: I am in Section 48, Chapter 121B.

MR. MORRIS: Are you citing language from that?

MR. MAHONEY: No. What I'm saying is, I'm presenting to you this argument, Mr. Morris: That a reading of Section 48 lists the...actually, there are seven enumerated findings that must be made, six separately listed and one preliminary one, that requires a finding that the plan conforms to the workable program and to the general plan.

In addition to those, I suggest that those are the minimal findings which the Department must address itself to in either approving or disapproving an urban renewal plan. I suggest, also, however, that the intent of the Legislature was vest in this Department a kind of quasi judicial and regulatory function.

MR. MORRIS: Well, now, counsel, we have listened to you for nearly twenty hours, and I would suggest that, at this stage, if you are going to make a summary argument the rest of your time, that at least for the record you address yourself to

the Commissioner in that light, but we're not interested right now in creating new areas.

MR. MAHONEY: No. I am following the precedent of the June 9 decision.

MR. MORRIS: I would like a reference from you other than these findings.

MR. MAHONEY: Section 48. It says, The Department shall not approve any urban renewal plan unless the planning board established under the provisions of...and so on...that first finding.

MR. MORRIS: That is the B.R.A. They have done that. Go ahead.

MR. MAHONEY: No. It says, The Department shall not approve. I'm reading, Mr. Morris.

MR. MORRIS: I understand.

MR. MAHONEY: Okay. That is the first finding. And the it says, And shall likewise not approve any plan unless it shall have found...then it lists, as you can see there, A through F.

MR. MORRIS: I understand. You covered that.

MR. MAHONEY: I have covered those headings, Mr. Morris. What I am saying to you is that that statutory language does not impose those as the sole determinations that this

Department may take into consideration in approving or disapproving a plan.

MR. MORRIS: Can't we just take judicial notice that the Commissioner can, in his discretion, take notice of other such facts as he may in the general public's interest?

MR. MAHONEY: Of course he can.

MR. MORRIS: Other than these findings, do you want to argue that point?

MR. MAHONEY: I don't want to argue it; no, sir. No, no. What I am about to cite to you are specific matters in the record of this resubmission that I wish to call to the Commissioner's attention under this concept. They are based specifically upon the records submitted by the Authority.

MR. MORRIS: Proceed.

MR. MAHONEY: I had already mentioned earlier the failure of the City Council to give notice to the Massachusetts Historic Commission and prior to the conduct of its hearings and the wholly inadequate financial disclosure statement, part one, which the Authority has accepted from the developer. I also mentioned their failure to require the developer to submit, and the Authority's failure to submit, part two of that statement, which would reveal the true financial condition and capacity of the developer to carry out this project and the nature of the

interests of any others in this project.

The entire Letter of Intent expressly states, and is qualified by the assertion and reasserted provision, "This letter sets forth the present intentions of the undersigned, Boston Urban Associates." Page one. "...represents the parties' present intentions." At page six. I am referring now to the Letter of Intent, November 28th, Exhibit 6.

On its face, it makes perfectly clear that nothing contained in the Letter of Intent is final and binding upon those parties. If they change their minds, or if one of them changes its mind, there is no legal duty or obligation which can be endorsed; thus, the provisions pertaining to the monies for the Public Garden and the Common may be reneged upon or changed; the deposit provisions and reimbursement provisions may be altered or modified, and so may any other provision in that Letter of Intent.

Now, as I have pointed out and will point out in subsequent sections of this presentation, there is literally not one guaranteed protection of the Public Garden and Common from admitted and now recognized adverse environmental effects resulting from wind or heights, expressly permitted by the plan, shadows, and other similar cited objections. It is hogwash for Mr. Kenney to claim that the building study provided in part 2,

Section 2.2, of the Letter of Intent, provides the necessary legal protections. In fact, that section expressly states, "If the Building Study is reasonably in conformity with the conceptual design heretofore submitted by Urban and in conformity with the objectives of the plan and the controls stated therein, approval of the Building Study will not be withheld." Page 6.

What this means, in plain and direct language, is that the Authority shall approve any building study, if it conforms to the original proposal submitted by the redevelopers of that proposal. That proposal is what gave rise to the objection to the long shadows that would be cast across the Public Garden. The plan expressly permits two hours in parcel one at heights of 450 feet, a 650-foot tower in parcel two, a 650-foot structure in parcel three, a 650-foot structure in parcel 4, and a 450-foot tower in parcel five. An additional 650-foot tower is expressly permitted in parcel A; therefore, pity the poor Society of Architects and the other misled civic groups who have been conned into believing that some yet-to-be-formulated advisory committee will have significant control over the design and environmental effects of this scheme.

The Authority has clearly and plainly misled and misinformed the Governor of this Commonwealth in representing to him that significant steps and agreements have been reached since

June 9, 1972, when the plan was disapproved, to correct the adverse environmental effects. The environmental impact statement is wholly unenforceable. No representation contained therein is reflected in the weak and unenforceable Letter of Intent and, much more importantly, in the urban renewal plan which is the only real protection provided to the public. That plan, as we know, is literally unchanged.

In December of 1971, after an exhaustive study of this plan, I warned the community that the plan itself would bring about the results that the testimony that you have heard from others now has made so clear. It has been unchanged. The public interest has not been protected.

The provisions contained in the Letter of Intent at page ten, providing for design review by the Department of Community Affairs, are absolutely unenforceable impositions of duties upon this Department and afford no legal protections.

There is no provision in the plan or in the Letter of Intent to adequately provide low and middle income housing, which is required if the plan is to be in the public interest. As I have previously mentioned in the section dealing with the financial soundness of the plan, there is absolutely no provision whatsoever in the Letter of Intent which would guarantee that money is available to carry out this project, if approved,

by requiring a firm commitment for the financing of land acquisition, construction, and permanent financing before the project may be undertaken.

A further illustration of the failure of the Letter of Intent to protect the public interest can be seen in the revision which has waived Urban's prior obligation under the old Letter of Intent to have paid \$75,000 to the Authority prior to December 31, 1972. The new provision, appearing at page 17 of the letter, now requires that Urban will only pay the Authority \$75,000 from the date of the City Council's approval "through a date 12 months after final and unconditional approval."

I can safely and flatly predict, I believe, that that \$75,000 will never be paid back to the Authority. The provisions appearing at page 18 of this Letter of Intent, for which the Authority and the developer seek to impose and defer approvals of the Department with reference to the developer's financing of the development of parcel C(3), and the Land Disposition Agreement, are, again, clearly contrary to the provisions of Chapter 121B, Section 48, and fail to protect the public interest. In fact, they seek to mislead the Department and to defeat the protections provided under Section 48 by attempting to obtain present approvals and defer the effective role which the Department is intended to play as a protector of the public

interest, nor has the Authority provided any significant improvement in the new Letter of Intent with reference to hardship payments. To be sure, at page 23, it appears that improvements have been made, in that the judgment and discretion with reference to hardship is now at least vested in the Authority where it belongs; however, in that same paragraph, that which is given is effectively taken away by the funding limitation which has been newly inserted, and I urge you to read that provision at page 23 carefully.

The provisions in the Letter of Intent, with reference to the sale of public land now owned by the city, or to be acquired by the city, are literally scandalous. On page 24 of the Letter of Intent, a specialized formula of fair market value is spelled out, which distorts the established meaning of that phrase and provides, in effect, that public lands will be sold to the developer at far less than their fair market value.

At the City Council hearing, the Authority admitted that it intended to sell such land to the developer for \$2,000,000. Evidence was submitted clearly establishing that the fair market value of that land was either \$9,000,000, which was the low estimate, or \$12,000,000, which was the highest estimate. In one single maneuver, millions of dollars of property, owned by the people of the City of Boston, is being handed over to

developers.

Who is protecting the public interest? The public is interested in the Letter of Intent reference to the sums that it appears will be paid in lieu of taxes. If payments are not being determined independently by public officers who hold that trust, they must be agreed upon by Urban. These provisions appear at pages 25 and 26 of the new Letter of Intent.

Look at the provisions in the Letter of Intent with reference to the "method by which all appraisals for acquisitions are to be made and the appraiser selected to perform the appraisals."

Appearing on page 28: "No offer shall be made by the Authority to the owner of any property as to the terms and conditions of any voluntary sale or settlement of any eminent domain proceeding without prior approval or Urban."

What could be more blatantly violative of the public interest? To be sure, assuaging language appears asserting, "The foregoing will in no way affect the rights of property owners to receive the full and fair cash value for their property."

As a practical matter, however, this provision means that Urban will determine the settlement figures; otherwise, owners who will not knuckle under to offers can go to court, which Urban and the Authority, thank God, are powerless to stop.

But, as a practical matter, this means that an owner in Suffolk County, who isn't willing to accept Urban's approved offer, may have to wait three to five years for a trial. And as a practical matter, Commissioner, I want you to know, as an attorney in this Commonwealth, that this means that a man who owns a building there and who wants to relocate and move his business, and who has perhaps got his whole life's savings invested, if he doesn't accept the offer dictated by Urban, he's stuck; he can't get new money, he can't move, he can't set up his new business again, and therefore, he's literally at the mercy of them because of the court congestion in this Commonwealth.

And I tell you, and I urge you, if you have any doubt about this, I wish you would check the Reports of the Judicial Council; check with the Chief Justice of the Superior Court. But, I implore you to please check this point out. This single provision puts every owner in parcels A, B, and C, and D and E, at the mercy of this developer.

On page 29, even though the Authority has repeatedly indicated that it has no funds to pay for property to be acquired, an express provision appears allowing Urban to get off the hook, if it does not come up with the money due, by simply making interest payments. What about the property owners who could be wiped out under the provisions? Where will the money come from

to pay them, while Urban goes on paying the interest rate in order to maintain its rights for future development? They will not be in default; they'll remain as the developer, and the poor owners won't be paid. Can this, by any fair, by any decent, by any objective standard, be said to be in the public interest?

I have already mentioned that provision need be made to secure only 30 percent of the approved prices made in eminent domain proceedings on properties. See page 28. That's a virtual guarantee that displaced owners, whose property has been taken, will have no assurance of prompt payment as required by law. All Urban needs to have is 30 percent of the aggregate value of that property. The Authority has accepted that as an acceptable standard.

Please look at page 29 of the revised Letter of Intent, and at page 33 of the revised Letter of Intent. As I believe I had previously mentioned, the Authority and Urban thumb their noses at your Department and the public, by flatly stating that the rules and regulations adopted by this Department governing state-aided urban renewal projects, which the Department has ruled apply to this project previously, do not apply.

I have earlier discussed the assignment provision, this very simple elusive provision, which permeates this entire scheme, and it's 6.3, I believe, of the new Letter of Intent,

wherein Urban has the right to assign its interest to others, providing only -- and this is the sole standard -- providing only that Messrs. Zuckerman and Linde are named as managing partners.

Let me be sure that point is clear. All of these rights, if you had a gold-plated statement from this developer before you, which you certainly don't have, under this slick provision, new entities can be formed with zero equity. With zero equity. And all that the Authority can do by its own agreement already entered into on assignment -- see the new Letter of Intent dated November 28th -- all they can stop is, if Messrs. Zuckerman and Linde are named as the managing venturers, that's the end of their say.

Now, if there ever was a provision, a simple provision, which one can grasp onto to see how this fantastic scheme, and I compliment these gentlemen who had the vision to conjure up a scheme of this kind for their personal gain and profits, they are very clever gentlemen, but their ethic is the developer ethic and it's not in the public's interest that's being served here.

FROM THE AUDIENCE: And they're not going to live forever. They can't take it with them. They should go over to the graveyards and see where they'll be in a few years, as we all will be.

MR. MAHONEY: I expressly call to your attention the provisions that the Boston City Council -- and you have those now introduced into evidence -- on December 6, 1971, by a vote of 4 to 3, defeated the provision that would have required the developer "to file with the Authority the name and address of every person who has any beneficial interest or ownership, whether direct or indirect, with such developer or assignee; and failure to comply with such provision shall constitute a default by such developer or assignee with the Authority."

That simple requirement was defeated by the contingent that voted consistently to jam this provision through the City Council. Why? I ask you, Commissioner, why should any plan in the public interest exclude a provision to disclose who owns what here? In fact, in the public interest, who's being protected by this kind of action?

Finally, the much-doubted deposits upon whom Governor Sargent so heavily relied in his unfortunate preliminary endorsement of this plan are, in reality, no protection of the public interest, in that the Authority has agreed to limit the damages that may be recovered in the event of a default to the amount of the deposits, which are only a small fraction of the damage that may result if, in fact, this developer, or one of its assignees, falters and defaults.

One last observation under this heading. Please note the provision contained in the Letter of Intent, November 28, 1972, at page 35, which permits the Authority to make any changes it wishes in parcels D and E, without Urban's consent. What does this provision reveal? It makes perfectly clear that, notwithstanding the September 12, 1972, letter of Mr. Zuckerman to Mr. Kenney, that this developer has no interest at all and no intent to act as a redeveloper in the Combat Zone. Does this reflect a protection by the Authority of the public interest to have the Combat Zone renewed and to seek to cause this developer to act in that capacity?

Again, we have a convenient slip. Here, they tried to persuade everyone, and Mr. Zuckerman sat here and solidly insured you that they certainly had a very real intent to act as a developer. But, what does the fine print show? At page 35 it says nobody may change anything in A, B, and C without our approval, but you do what you want with D and E. You can draw, I think, a reasonable inference from that, Commissioner, as to how credible their interest is. And that letter, I remind you, was executed on November 28, 1972, and submitted here.

Without regard to any of the other major legal deficiencies about which I have testified concerning this plan and others before you, I believe you should disapprove the urban

renewal plan because of its gross failure and flagrant failure indeed to protect the public interest.

The next argument is the plan does not serve a public purpose.

Underlying the objections of the taxpayers -- and, if I may, let me underscore this role, now -- the taxpayers and Mr. Morris, I know, and others in your panel are familiar with the remedies that God made available to taxpayers in this Commonwealth, who have brought this petition as the fundamental contention that this plan fails to serve a public purpose.

Many of the lay witnesses that appeared before you have, in their own way, identified this fundamental defect. They have spoken of the moral or ethical issues involved in taking one individual's property and giving it to another.

The Declaration of Rights of the Constitution of the Commonwealth, at Article 10, and the United States Constitution, prohibit takings which do not serve a public purpose. That law codifies the Commandment THOU SHALT NOT COVET THY NEIGHBOR'S GOODS.

The power of eminent domain may be exercised by the sovereign only for a public purpose. These include the taking of private lands for schools, hospitals, roads, fire stations, parks, and other like purposes, which the Courts had accepted as

meeting the standards of a public purpose. About 40 years ago, this purpose was broadened to include the taking of private property for the provision of public housing, and only recently the taking of public land for the elimination of blight or decadence.

As you know, the Courts had not inquired into the intended reuse of land taken for the purposes of eliminating blight or decadence, largely because they have relied on the safeguards and procedures which existed under federal and state-aided urban renewal programs.

The plan before you, however, is not governed by these purposes, for these purposes, by such federal and state standards. The plan before you is, in fact, unique, in that it is a plan for privately-sponsored renewal.

I respectfully submit, Commissioner Mahoney, that yours is now a truly solemn obligation. I literally implore you to recognize that the Courts have been most reluctant to review the determination of a legislatively-delegated entity, such as your Department, that a condition of blight or decadence exists. And I might say parenthetically that, here, I have given really a quick and summary treatment. There has been no adversary hearing here with reference to the issue of decadence alone, and it's understandable why the Courts have delegated this quasi judicial function to administrative agencies. But, if those

standards are applied here, your finding -- your findings -- no matter what else you may intend, Commissioner, may be conclusive and literally may determine the life and interests of the innocent victims who are the subject of this deal.

I submit that we have demonstrated beyond all reasonable doubt that the Authority has failed to establish evidence of decadence for area eligibility, and that the area is substandard warranting clearance. Any finding to the contrary must rest upon actions and findings of the Authority, which, we submit on the record of the prior hearing and of this hearing, were made in bad faith, show evidence of doctored classifications and records, we submit, are arbitrary, capricious, and are irrational.

Clearly, if there is no decadence, there is no public purpose, because the reuse of the land here is solidly for the benefit of the redevelopers and certainly not in the public interest or for public purpose.

Having served as a public official in the Executive and Judicial branches of our government, I have some idea of the awesome responsibility which you face in making your decision. You, and the Governor of this Commonwealth, and your Department, and others, have been subjected to unwarranted, unjustified, and unseemly pressures. I have been appalled at the injudicious advocacy of the public press attempting to influence by political

means and pressures your decision which is in the nature of a quasi judicial proceeding.

I have witnessed here the organized rally of construction workers that was unleashed upon the State House this summer, reminiscent of the brown-shirt techniques abhorrent to men who value a free system of government, who would provide a fair, honest, and impartial decision by entrusted public officials.

I urge you, and I literally plead with you, on behalf of the taxpayers of the City of Boston, and most especially on behalf of the people who are directly affected, to disapprove this plan, which I say is your duty under the law, based upon the facts produced by the Authority and by the opponents at this hearing. For you to do otherwise would be to betray the solemn trust which was vested in you when you took your oath of office.

And now, I would like to submit a final argument resting outside of Chapter 121B. And that is, the Department may not make a determination approving this plan without (1) making a finding describing the environmental impact of its approval; and, (2) making a finding that all feasible measures have been taken -- past tense; have been taken -- to avoid or minimize said impact.

Chapter 781 of the Acts of 1972 added a new subsection 61 to Chapter 30 of the General Laws. And I shall not read it here; I'm sure you have read it, Commissioner. While the first sentence of this statute literally applies only to works, projects, or activities...

MR. MORRIS: Mr. Mahoney, we will take a short recess.

(Recess.)

MR. MORRIS: The hearing will resume.

MR. MAHONEY: Mr. Morris, off the record.

(Discussion off the record.)

MR. MAHONEY: While the first sentence of this statute literally applies only to works, projects, or activities conducted -- those are quotes -- by agencies of the Commonwealth, it is of more than passing interest to note the recent trend of state and federal court decisions interpreting the requirements of various environmental protection statutes as applicable to private activity where the state is in any way involved, such as by issuing permits or otherwise approving the proposed private activity, as well as to direct public action affecting an environment.

Of more obvious impact, however, are the second two sentences of the new statute. By providing that unless a

contrary intent is manifested, all statutes, including Chapter 121B, Section 48, shall be interpreted and administered so as to minimize damage to the environment, it reinforces the requirement that the Department consider environmental effects previously considered by it as they related to the sound means of the locality as a whole. Moreover, the last sentence specifically requires the Department to make additional findings beyond those required by Chapter 121B, Section 48, before it could give approval to the proposed plan. Specifically, the Department must (1) make a finding describing the environmental impact of the project; and (2) make a finding that -- and I emphasize these words -- all feasible measures have been taken to avoid or minimize the environmental impact.

At this point, I would like to refer you to the previous comments on environmental considerations as they relate to the soundness of the locality as a whole, without going into all those here. Among the areas of potential damage to the environment resulting from the intensive development of the project area, recognized even by the Authority, now, in its environmental impact statement, are the following: (1) The effects have shadows cast by the proposed high-rise buildings on the trees and on the vegetation in the Common and Public Garden, as set forth, and the height limitations specifically, of course, as

set forth in the Plan. (2) The effect of winds created by these towers on the Common and on the Garden. (3) The effects of construction on the water table. (4) The effect of an exhaust from the massed buildings and possibility of thermal and air pollution. (5) The effect on the Common and Garden of increased pedestrian traffic and usage. (6) The effect of increased automotive traffic and the possibility of exhaust and noise pollution. (7) The effect on existing utility systems and services of increased demand, specifically, the possibility of an already overtaxed sewerage disposal system not being able to cope with the increased load.

Let me pause briefly there to say I specifically urge you, Commissioner, to read the reports of the Metropolitan District Commission on the condition of the sewerage system and of Boston and the fact that raw sewerage is now being poured by Boston into Boston Harbor, and this plan, as the Authority so eloquently sets forth, is going to bring thousands of more people to live in Boston--7,000 people, 1600 new dwelling units? I call that expressly to your attention and hope you'll talk to Commissioner Sears and others in regards to this, and Secretary Foster.

And (8) the effect on the waters of Boston Harbor and the treatment in dumping of the untreated sewerage.

These are among the areas of potential damage to the environment that the Department must consider and describe in its findings before it may lawfully approve any such plan. The materials submitted to you by the developer and by the Authority in its environmental impact statement have certainly left you woefully illequipped to consider and describe these environmental impacts.

Nowhere has there been anything more than a mere listing of environmental considerations. No studies have been prepared by the developer, or certainly none by the Authority, which attempt to quantify these effects on the environment. Until you know where the various towers will be located, specifically what their heights will be, you could not possibly gauge the effects of their shadows.

Without an estimate of increased automotive traffic, you are unable to even consider the extent of the potential exhaust and noise pollution. The list, as you can see, is literally endless. Without further concrete information, it is impossible for the Department to make the required statutory findings describing the environmental impact of the project that it is now asked to approve.

It has been more than six months since the Department, in its decision of June 9th, pointed out to the Authority

that it felt that the development of Park Plaza had been undertaken "without a full exploration of all the problems involved," and suggested that an environmental impact statement would be a useful tool to it in making its decision.

During the six months during which it has supposedly been assiduously working to meet your objections, the Authority has apparently not made a full-scale exploration of the impact of the project or else it has some reason for not making the fruits of its efforts available to you.

The environmental impact statement submitted to you by the Authority is no more than a hastily prepared collection of generalities, without substantive documentation designed to cater to your whims without responding to the legitimate concerns expressed by you in your earlier decision rejecting the plan. For the Authority and its team of lawyers and consultants to ignore the requirements of Chapter 30, paragraph 61, is akin to its previous avowal it was unaware at the time of the prior hearing of the Department's rules and regulations dealing with location requirements.

How can the Chamber of Commerce and other business and community leaders urge the Department to approve a plan with such far-reaching consequences on the basis of such a shoddy submission. Is it any wonder that Director Kenney has

expressed a hope for speedy departmental approval?

The second part of the finding that Chapter 30, Section 61, requires the Department to make is "that all feasible measures have been taken to avoid or minimize" the environmental impact. What steps has the B.R.A. taken to this date? The answer is literally none.

On page nine of its environmental impact statement, the Authority has included a section generously entitled Environmental Safeguards. What are these purported 'safeguards'?

First, the developer shall engage a wind consultant to submit all reports as wind studies progress. Apparently wind studies have not progressed very far, since the Authority has made no such studies available in the course of this hearing.

Second, the design review process will focus on design aspects that affect the environment. The only provision is made for design review process/in the letter of intent, but nowhere is provision made for consideration of environmental impacts during this review process, and you may recall that I pointed out to you earlier that, indeed, the express provisions contained in the first phase of the design review process, that if the developer submits a building scheme study, that's in conformance with the plan and its original submission, the Authority must -- must -- approve that scheme. And so, the developer is

free to build the 650-foot towers allowed by the plan, the 450-foot towers allowed by the plan, and they have already put you on notice, the Authority and the developer, that they have legally entered into an agreement expressing their intent to do so.

Third, the Authority will retain an independent environmental consultant and has begun interviewing consultants. After committing thousands of manhours and taxpayers' dollars to Park Plaza, six months after receiving the Department's decision rejecting the plan the Authority has still not engaged an environmental consultant. But, fear not, once you have approved the plan, they tell you, they will eventually do so. These are the only steps proposed by the Authority to avoid or minimize environmental impact. All they amount to is a set of promises or representations as to future action.

Are we to take this to mean that, to date, nothing has been done to prevent danger to the environment? Have we any assurances that these so-called safeguards will be observed? Given the Authority's past record of unilaterally changing provisions of the Letter of Intent after its execution, and even waiving requirements inserted in the Cooperation Agreement by the City Council and thus nullifying the City Council vote, I think their promises are literally worthless.

Again, let me emphasize that these so-called

safeguards listed by the Authority in the environmental impact statement are the only evidence submitted by the Authority of measures designed to deal with the environmental impact of the proposed development. It is solely on the basis of this evidence that the Authority expects you to find that "all reasonable steps have been taken to avoid or minimize" the environmental impact of the project.

On the basis of the evidence submitted by the Authority, you cannot possibly find that "all feasible measures have been taken. On the basis of the evidence before you, you can only find that no measures have yet been taken. The only measures designed to in any way affect environmental impact are steps that will be taken at some unspecified time in the future, after your sought-after approval of the plan; thus, the Authority shall engage a wind consultant; the design review process will focus on design aspects that will affect the environment; the Authority will retain an environmental consultant. Moreover, these meager measures supposedly to be taken in the future can in no way be said to be all feasible measures to minimize or avoid the environmental impact.

Thus, on the record before you, the Department cannot, indeed it should not, make the findings required of it in making the determination approving the plan sought now by the

Authority.

The Authority, in resubmitting the plan to you, has still failed to actually explore all the environmental problems involved. The environmental impact statement submitted to you is literally a sham, totally lacking in detail, in concrete information. There is no evidence that any measures have been taken to minimize or avoid environmental impact and no guarantee that such measures will, indeed, ever be taken.

Now, Mr. Examiner, that concludes the formal presentation on behalf of the persons whom I have represented in this proceeding. You will recall that we had agreed earlier that at some appropriate time there would be an opportunity for clarity in this record for there to be listed by identification those large categories of exhibits that would be broken down under individual categories. I refer specifically, Mr. Morris, for example, to all of the exhibits incorporated in the prior record and the transcript thereof; I refer to what is now labeled as Exhibit 6, which has a whole series of multiple exhibits there. And I wonder, at your convenience, if some administrative measures could be arranged with counsel from the Authority, and ourselves, and any others who wish to come to identify those, if they could be so marked properly and identified in the record so there will be no mistake as to the documents we are

referring to.

MR. MORRIS: First, I want to compliment you, Mr. Mahoney, on your extensive testimony and the manner in which you have presented this to the public; to the panel.

Secondly, I want to make it clear that it is our belief that the Authority has been present throughout these proceedings and has listened to the objections voiced, the detailed arguments regarding this development, and we presume that they will want an opportunity to make appropriate answers within the time allowed from the conclusion of the hearing, and that they will attempt to do that at the earliest possible date, so that Mr. Mahoney will have an opportunity to respond and have it included in the record.

In addition to that, with regards to the administrative aspect of identifying material which is already in the record, I rule that this can be done, regardless of whether the hearing is adjourned or recessed, on the basis that I made that determination earlier, and all parties have had a reasonable opportunity to do so, and there appears to be no objections to everything that you have offered. And, on the other hand, the Authority has not attempted to withdraw anything which you have claimed is in conflict or that type of thing. Had I noted that, I possibly would have made an exception.

MR. MAHONEY: Excuse me. I want to be sure I understood your statement. I want to be sure I have a clear understanding of the thrust of your statement. Are you saying, Mr. Morris, that your ruling is that those documents incorporated from the prior hearing and this hearing, and the materials submitted from the date of the disapprovals and so on, can be incorporated and enumerated through Mr. Mangini into this record?

MR. MORRIS: Through you, Mr. Mangini, or through the B.R.A. jointly; and as long as the record is clear, and it is transmitted in due course to the Court Stenographer, we will have it included in the record, which, incidentally, will take several weeks to prepare. And I think that there will be reasonable time enough for this to be done, in the spirit in which we are attempting to expedite this thing.

MR. MAHONEY: Very well.

MR. MORRIS: That is the spirit of what I am trying to say. If there's no objection to that, that will be the method.

MR. MAHONEY: Could we have it clear that is agreed to by the Authority?

MR. MORRIS: Well, the Authority, if it has objection to that, I think they can stand up and state it. It is pretty clear that all the evidence is in.

MR. McCANN: The B.R.A. has no objection as to how exhibits are classified.

MR. MORRIS: I think the purpose is to have a clear public record.

MR. MAHONEY: That's all, sir.

MR. MORRIS: I will agree with Mr. Mangini -- I will be available -- and such sub-numbering of documents will be inserted into these some 50-odd exhibits, as long as they have already been presented by your notes or references. So, that should clarify that point.

Now, with regard to the citizens -- all persons -- whether they are here at the hearing or not, due to the publicity on this case, will have a right to submit, in writing, any statements they have relative to the project, within ten days of the hearing, whether they are for or against it or whatnot. All of these letters or papers will be on file at our office and will be available to the general public for inspection for a reasonable time after their submission. After that, the Commissioner will take all of this evidence into consideration. There will be an allowance of time -- 10 days -- for written material coming in; and if the Authority submits their material, and you wish to submit additional material, I think we can be reasonably flexible as to what's going to constitute the final

record of review for the Commissioner, as long as it comes in within that period of time or within such time or extension of time as we may, at our discretion, offer for that purpose.

The only other point that I want to cover before I consult with the panel is whether anyone here has any questions, now that Mr. Mahoney has finished his testimony substantially. There is a question from the gentleman in the back. Your name, please?

MR. DONALD GROW: Mr. Commissioner, Mr. Chairman, how will the average citizen or businessman that will be ultimately affected by this be informed of the decision of the Commissioner?

MR. MORRIS: How will he know? Repeat that.

MR. GROW: How will he know of the Commissioner's decision? Of the formal decision.

MR. MORRIS: Well, the answer to the question is, after full consideration of the documentation, and the Commissioner has made the final decision, he will communicate it to the Boston Redevelopment Authority, and it will obviously be covered by the press. And I'm pretty sure that it will become common knowledge, what the decision on Park Plaza is, between the media and the TV people. That is the best answer I can give you as Hearings Officer.

MR. GROW: I thought perhaps, where we were put

under all this duress for the past....I don't know...nine or ten years, that where we have lost so much already, that the very least we could be informed of how we stand after the Commission makes a decision, by some way other than by the press.

MR. MORRIS: We will let the record note your suggestion for what value it has. I am quite sure the Department will take that under consideration. Your name, please?

MS. ELIZABETH McCORMACK: I am a life-long resident of Boston. I'm against anything that the B.R.A. touches. They have not in the past, nor will they in the future, have any interest in the people who they remove. They could not relocate a simple family that consisted of two widows and four children. How can they possibly relocate anything that was mentioned here today? They are not interested in relocating people; their only interest is taking property from people who worked their lives for; and we are further being victimized because we were told that the taxes in the City of Boston would be reduced. My rent has gone up \$60 in four years, and it's just a matter of time and we'll all be taken with it. They'll be taken with it, too, because you can't build on something like this. And it's a monument to greed. That's what the B.R.A. represents--no compassion, no feeling for people. And I can only excuse them on the grounds that perhaps they have lost their minds.

MR. MORRIS: Any other comments from anyone before the hearing concludes? Did you have a point? Is there any other citizen who wants to speak at this public hearing? We are nearing conclusion.

We will ask Mr. McCann to come up and confer with Mr. Mahoney before we close out these proceedings and before we make any final statement in terms of the current public hearing.

(Conference off the record.)

MR. MORRIS: Back on the record. Ladies and gentlemen, the hearing will resume. Mr. Mahoney has completed his testimony. Before we conclude this session, the B.R.A. has asked either directly or by implication, or by request previously, about a design review committee. Has that committee been formed or not? Can the Authority give us information regarding the design review committee regarding the development? Secondly, a project area committee was supposed to have been worked out in connection with this development, and for whatever probative value it may have, the Commissioner would like that type of information provided to the Department.

Thirdly, there has been submitted during this proceeding, and I'm quite sure you heard about it, mention of Chapter 30, Section 61, allegedly pertaining to agencies of the Commonwealth and certain acts or actions that should be taken

in connection with planning and projection for development of the project, of this type.

We would like to know from the Authority, either now or along the same line that the other questions were posed, if they will be able to answer these questions so that they are made a matter of the record before the record closes out, mindful of the fact that you have a certain amount of time in which to do that.

The other point is, are you prepared today to say approximately how long it will take you to get just that information together, with the other information which has been requested? Can you give any indication now? We are trying to work out a reasonable way in which to describe this proceeding and any extension to this proceeding.

MR. McCANN: If there is a problem with the 10-day period, I would assure you we would have the material to you within half of that time.

MR. MORRIS: That's five days.

MR. McCANN: That is correct; right.

MR. MORRIS: Are you excluding Saturdays and Sundays?

MR. McCANN: Counting Saturday and Sunday; I don't care.

MR. MORRIS: Well, why don't you get a calendar and

be specific. What day do you think you can have this material in? I know it's late and all of us are tired and a little taxed, perhaps, but let's pin this down to dates. If you can do it within the 10-day period, it will be acceptable.

MR. McCANN: Yes, that's what we've always intended to do, surely, within the 10-day period.

MR. MORRIS: But, you are suggesting you can do it in five days.

MR. McCANN: I was only suggesting, if there was a problem with the rebuttal response to anything we submitted, that we would either grant an extension beyond that 10 days or five days, or if the answer's in five days.

MR. MORRIS: Well, at least you have made an offer. If you can get yours in within five days, if you can get your material in within five days, and Mr. Mahoney can reply within five days, both of you have that equal time on all of these questions, at your leisure, and your statement on the design review committee, the project area committee, and the environmental impact study, then that would leave/^{an}additional five days through which all the material would be on the record and within the reasonable time set up by these uniform rules for the public hearing.

Now, if I can get you two lawyers to agree on that,

we then could conclude this to an adjournment, if you are both in good faith.

Now, on the record -- and I'm on the record -- I would like to accomplish that purpose without infringing on anyone's rights, if that's reasonable. Now, what do you say, counsel for both sides?

MR. McCANN: The B.R.A. is in good faith.

MR. MAHONEY: I had apples under that barrel before; that's what I say. That is not acceptable, Mr. Morris. I can't agree and bend to materials the size or scope or detail of which I literally have no idea what the answers are going to be. I assume you are referring, Mr. Morris, you didn't list them, but I assume you intended to include all of the written and other...

MR. MORRIS: I said, all of the other directed questions to the Authority. They have been here and have taken note of everything that we have asked them to do through you, questions that have come through the Chair, which they said they would respond to, and we understand Mr. Kenney was not able to get here, for some reason, but at least we are expecting answers from representative persons of the Authority on all these questions, and they state they can have that within five days. Within the 10-day period.

MR. MAHONEY: Mr. Morris, I will make this

representation to you, sir, and I assure you I will do my level best physically, the moment that we get that material...

MR. MORRIS: Within that five days.

MR. MAHONEY: ...I want to know, if I'm suddenly confronted with brand-new financial material that has never been introduced before or newly-revised building surveys or the like, why, we could be into very substantive material that may not be possible to complete in five days; and I cannot, therefore, in conscience, bend and make the kind of agreement you asked me to, sir.

MR. MORRIS: You see why I'm asking. I could see you would have another 20 or 40 hours of time that you would request, and we would hate reasonably to deny you that time and this public issue will be dragged on and off.

Now, I ask you again to please try to consider, in good faith, the offer they made, and I'm quite sure the Commissioner will accept from you material. We are going to be five weeks getting this transcript.

MR. MAHONEY: May I make a suggestion on the record or off the record.

(Conference off the record.)

MR. MORRIS: Well, gentlemen, there has been some clarification by the panel at this procedural point, and the

judgment of the panel is as follows: That the Boston Redevelopment Authority will be expected to submit the answers to the questions posed, including those recently stated here concerning the design review committee, the project area committee, and the environmental impact implications under Chapter 30, Section 61, and at such time as this material is submitted, this hearing will be declared adjourned, that is, when you have indicated that you have made this full submission; thereafter, the 10-day period will run allowing all persons, parties of interest, to submit information and, thereafter, of course, we'll run the period of time during which the Commissioner will be taking this entire matter under advisement and will have at his discretion all the rights and privileges accorded him as an officer of the Commonwealth to make such judgments as he may deem proper in this matter.

Now, for the record, that's my statement, and that concludes, at this point, this phase of the hearing on Park Plaza.

Are there any questions or clarifications required?
Any questions or clarifications required?

MR. MAHONEY: Mr. Morris, I would like simply to say to the Department, on behalf of the petitioners and the taxpayers, that I would like to express our appreciation to the

panel for its patience with us in trying to present these materials and to you, sir, I thank you for what I regard as a very fairly-conducted hearing.

MR. MORRIS: Thank you for your kindness and good-night.

(Whereupon, at 7:25 o'clock,
p.m., the hearing was
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